

NAVAL WAR COLLEGE

International Law
Documents
1943

THE RETURN
OF THE WAR COLLEGE
VICTIMS, R. I.

Please return
to
NAVAL WAR COLLEGE
PORT, R. I.

NAVAL WAR COLLEGE

NEWPORT, R. I.

**INTERNATIONAL LAW
DOCUMENTS**

1943



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PREFACE

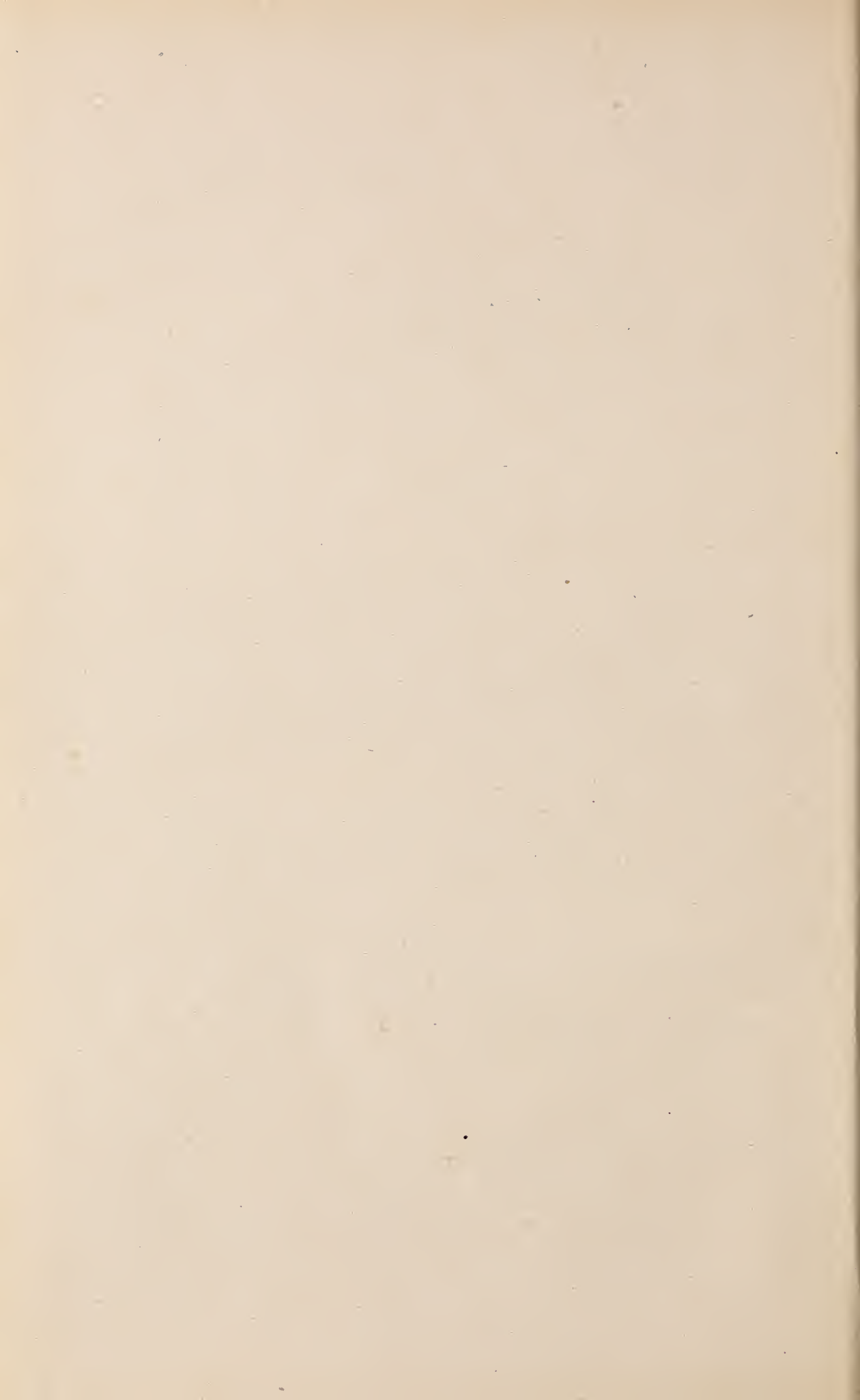
The annual publication of the Naval War College on international law for 1943 has been prepared, as formerly, since 1938, in collaboration with Payson Sibley Wild, Jr., Ph. D., professor of international law, Harvard University, and associate for international law, Naval War College.

Discussions at the Naval War College have given special attention to international law in its relation to the conduct of the war now in progress. Important and relevant documents concerning belligerents and neutrals also have been under consideration. Documents cited in this volume are among those discussed.

While certain of these documents are easily accessible, others have not yet appeared in any collection and are not readily available to naval officers.

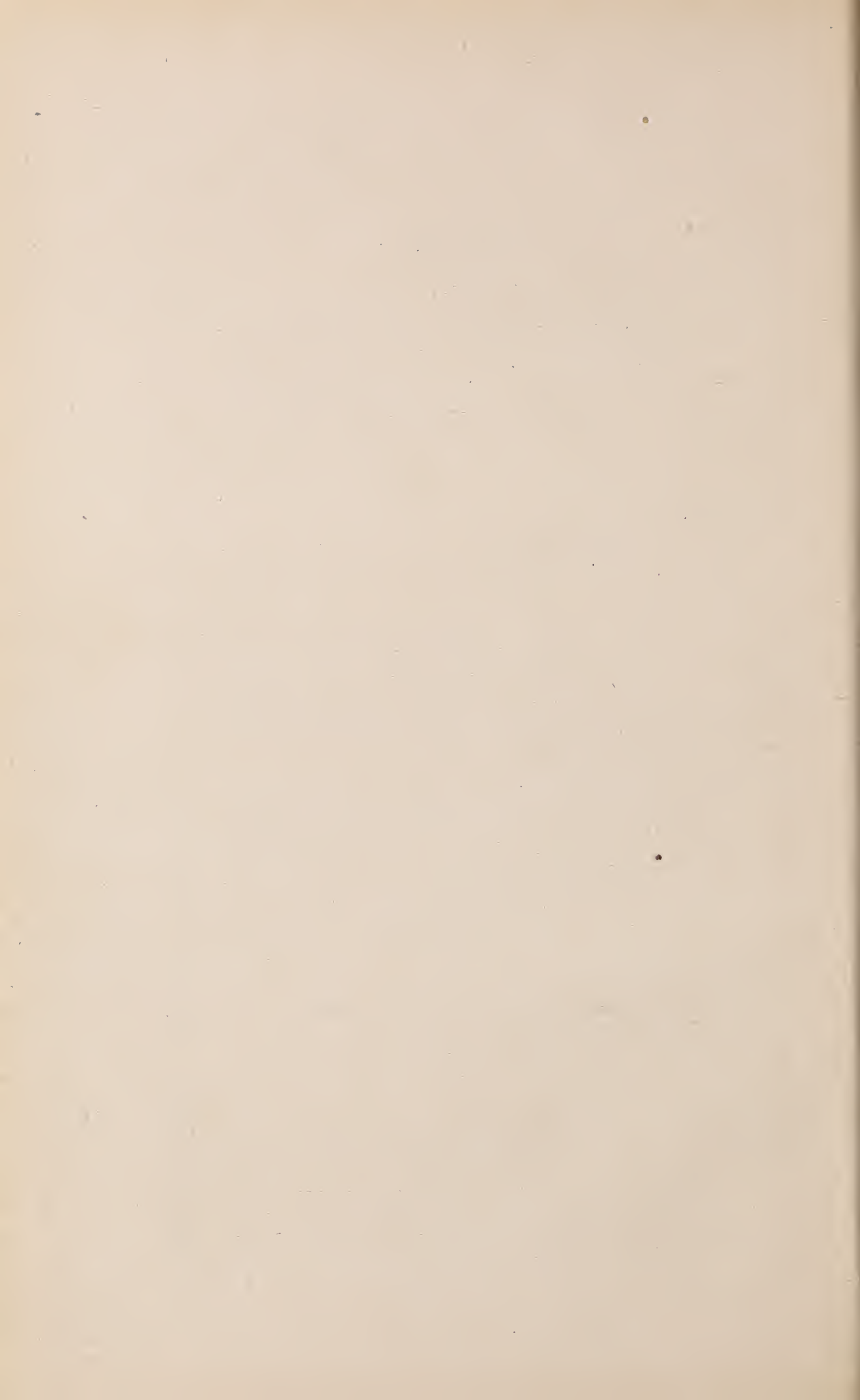
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Vice Admiral, United States Navy, (Ret.),
President, Naval War College.

10 OCTOBER 1944.



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I. Visit and Search

1. *A Belligerent Right.*

The right of visit and search in time of war, recognized in practice and by treaties as early as the 15th century was firmly established in the 18th and 19th centuries. Visit and search, it was discovered, was essential for the exercise of the right of capture.

1. "The right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation."

The Maria, (1799). 1 C. Rob., 340. An English case.

2. "Belligerents have a full and perfect right to capture enemy goods and articles going to their enemy which are contraband of war. To the exercise of that right the right of search is essential. It is a means justified by the end. It has been truly denominated a right growing out of, and ancillary to the greater right of capture."

The Nereide, (1815). 9 Cranch., 388. An American case.

3. Article 27. "If the ships of the said subjects, people or inhabitants of either of the parties shall be met with, either sailing along the coasts or on the high seas, by any ship of war of the other, or by any privateers, the said ships of war or privateers, for the avoiding of any disorder, shall remain out of cannon-shot, and may send their boats aboard the merchant ship which they shall so meet with, and may enter her to number of two or three men only, to whom the master or commander of such ship or vessel shall exhibit his passport concerning the property of the ship, made out according to the form inserted in this present treaty, and the ship, when she shall have showed

such passport, shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or search her in any manner, or to give her chase or force her to quit her intended course."

Treaty between the United States and France, (1778) Malloy, *Treaties, Conventions*, Vol. I, 477.

Similar articles were inserted in many other treaties concluded by the United States in the 18th and 19th centuries. For example: Conventions, Treaty with Sweden, (1783), Art. 12, Malloy, *Treaties* II, 1729. Treaty with Columbia, (1824), Art. 18, Mallory, I, 297-8. Treaty with Bolivia, (1858), Art. 21, Malloy, I, 120.

4. "12. The belligerent right of search may be exercised without previous notice, upon all neutral vessels after the beginning of war, to determine their nationality, the character of their cargo, and the ports between which they are trading."

Instructions to U. S. Blockading Vessels and Cruisers, General Orders, No. 492, (June 20, 1898). *United States Foreign Relations*, 1898, 781.

Cases and documents of the 20th century merely reaffirm this right of visit and search.

1. "* * *" according to the principles universally acknowledged, a belligerent war-ship has, as a general rule and except under special circumstances, the right to stop a neutral commercial vessel in the open sea * * *"

The Carthage, Scott, *Hague Court Reports*, (1916), 330.

2. "(6) A belligerent warship has, incidental to the right of seizure, the right to visit and search all vessels on the high seas for the purpose of determining the hostile or innocent character of the vessels and their cargoes."

Memorandum of the Secretary of State, (April 27, 1916). *United States Foreign Relations*, 1916, *Supp.*, 247.

3. "42. The belligerent right of visit and search, subject to exemptions mentioned in Section VII, may be exercised outside of neutral jurisdiction upon private vessels after the beginning of war in order to determine their national-

ity, the port of destination and departure, the character of their cargo, the nature of their employment, or other facts which bear on their relation to the war."

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 21.

4. "Commanders of all Naval vessels shall whenever possible take necessary steps to assure themselves of the character of all vessels sighted on the high seas in accordance with international law and usage."

Alnav No. 78, (May 21, 1918). *United States Foreign Relations*, 1918, *Supp.* 1, Vol. II, 1934.

5. Article 1. "1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship * * *"

Convention on Maritime Neutrality between the United States and other American Republics, (1928). *United States Treaty Series*, No. 845, 2.

6. "Any seaplane met at sea by a vessel of war may be visited and searched to determine its relation to the hostilities and it may be treated according to the evidence formed."

United States Naval War College, *International Law Situations*, 1935, 89.

7. "It is agreed in principle that belligerent airplanes have the right to visit and search not only neutral surface vessels but also neutral aircraft."

United States Naval War College, *International Law Situations*, 1938, 15-16.

8. Article 49. "(1) A belligerent has the right of visit and search on and over the high seas and on and over territorial waters that are not neutral."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). 33 *American Journal of International Law*, (1939), *Supp.* 184.

2. Purpose.

Visit and search is necessary in order to determine whether or not a ship is liable to capture under international law.

1. "12. The belligerent right of search may be exercised without previous notice, upon all neutral vessels after the beginning of war, to determine their nationality, the character of their cargo, and the ports between which they are trading."

Instructions to U. S. Blockading Vessels and Cruisers, General Orders, No. 492, (June 20, 1898).
United States Foreign Relations, 1898, 781.

2. "A belligerent warship has incidental to the right of seizure, the right to visit and search all vessels on the high seas for the purpose of determining the hostile or innocent character of the vessels and their cargoes."

Memorandum of the Secretary of State, (April 27, 1916). *United States Foreign Relations*, 1916, *Supp.*, 247.

3. "42 * * * to determine their nationality, the character of their cargo, the nature of their employment, or other facts which bear on their relation to the war."

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 21.

4. "* * * with the object of ascertaining its (the ship's) character and nationality and of verifying whether it conveys cargo prohibited by international law or has committed any violation of blockade."

Convention on Maritime Neutrality between the United States of America and Other American Republics, (1928). *United States Treaty Series*, No. 845, 2-3.

3. *Craft authorized to exercise the right of visit and search.*

Before the first World War, only commissioned warships exercised the right of visit and search.

1. See Article 27 of the Treaty between the United States and France, (1778). Above, under *A Belligerent Right*.

2. "The right of visiting and searching * * * is an incontestible right of the lawfully commissioned cruisers of a belligerent nation."

The Maria, (1799). 1 C. Rob., 340.

3. Article 1. "Privateering is and remains abolished;"

Declaration of Paris, (1856), (translation). "La course est et demeure abolie;" *British and Foreign State Papers*, Vol. 46, (1855-1856), 26.

Since the beginning of the first World War, the right of submarines and airplanes, as well as war-ships, to exercise the right of visit and search has been recognized.

1. "according to the principles universally acknowledged, a belligerent war-ship has * * * the right to stop a neutral commercial vessel in the open sea."

The Carthage. Scott, *Hague Court Reports*, (1916), 330.

2. "(6) A belligerent warship has, incidental to the right of seizure, the right to visit and search all vessels on the high seas * * *."

Memorandum of the Secretary of State, (April 27, 1916). *United States Foreign Relations* 1916, *Supp.*, 247.

3. "Submarines have the right to order the ship's papers of any vessel held up to be brought alongside in a boat."

Revised German Prize Code, 1916. United States Naval War College, *International Law Documents*, 1925, 118.

4. Article 1. "(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

"A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after seizure.

"A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

- "(2) Belligerent submarines are not under any circumstances exempt from the universal rules above stated; and if a submarine cannot capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and to permit the merchant vessel to proceed unmolested."

Article 3. "The Signatory Powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any Power who shall violate any of those rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found.

Article 4. "The Signatory Powers recognize the practical impossibility of using submarines as commerce destroyers without violating, as they were violated in the recent war of 1914-1918, the requirements universally accepted by civilized nations for the protection of the lives of neutrals and non-combatants, and to the end that the prohibition of the use of submarines as commerce destroyers shall be universally accepted as a part of the law of nations they now accept that prohibition as henceforth binding as between themselves and they invite all other nations to adhere thereto."

Treaty Concluded at the Washington Naval Conference in Relation to the Use of Submarines and Noxious Gases in Warfare, (1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

5. Article 49. "Private aircraft are liable to visit and search and to capture by belligerent military aircraft."

Article 50. "Belligerent military aircraft have the right to order public non-military and private aircraft to alight in or proceed for visit and search to a suitable locality reasonably accessible.

"Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination exposes an aircraft to the risk of being fired upon."

General Report of the Commission of Jurists at the Hague, (1923): 17 *A. J. I. L.*, (1923), *Supp.*, 257.

6. Article 1. "The following rules shall govern commerce in time of war:

"1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not

neutral any merchant ship with the object of ascertaining its character and nationality and of verifying whether it conveys cargo prohibited by international law or has committed any violation of blockade. If the merchant ship does not heed the signal to stop, it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it.

"The ship shall not be rendered incapable of navigation before the crew and passengers have been placed in safety.

"2. Belligerent submarines are subject to the foregoing rules."

Convention on Maritime Neutrality between the United States and Other American Republics, (1928).

United States Treaty Series, No. 845, 2-3.

7. Article 22. "The following are accepted as established rules of International Law:

"(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject."

Treaty between the United States and Other Powers for Limitation and Reduction of Naval Armament, (1930). *United States Treaty Series*, No. 830, 27.

Also the *proces-verbal*, (1936). 173 *League of Nations Treaty Series*, 353.

The rules stated in this Treaty of London (1930) and in the *proces-verbal* of 1936 were invoked by the International Agreement for Collective Measures against Piratical Attacks in the Mediterranean by Submarines signed at Nyon on Sept. 14, 1937. The same rules were applied to aircraft through Article II of the Supplementary Agreement to the Nyon Arrangement.

United States Naval War College, *International Law Situations*, 1938, 100-103.

8. Article 49. "(2) A belligerent may exercise the right of visit and search only by a commissioned warship or commissioned military aircraft. Belligerent armed merchant vessels or armed nonmilitary aircraft may not exercise the right of visit and search."

Article 54. "(2) A submarine or aircraft which does not carry a small boat may direct a visited vessel to send its boat to the submarine or aircraft with an officer carrying the ship's papers."

Article 109. "(2) If sea conditions permit the aircraft to alight, the aircraft shall alight and the procedure applicable to surface vessels shall be followed.

"(3) If the belligerent aircraft is unable to alight, it may require the vessel to proceed on its course under instructions as to speed until the sea moderates or until a naval vessel of the belligerent appears. If visit and search are not effected by either means within six hours, or if the aircraft does not remain within sight or hearing of the merchant vessel, the vessel may resume its course at normal speed."

Article 111. "(1) Uncertified neutral private aircraft are subject to visit and search by belligerent commissioned military aircraft.

"(2) Such belligerent aircraft may order such neutral aircraft to alight for visit and search in a locality reasonably safe and accessible.

"(3) Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination, exposes an aircraft to the risk of being fired upon."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). 33 A. J. I. L., (1939), Supp., 184-5, 185-6, 197.

4. *Craft subject to visit and search.*

Before the development of the airplane, visit and search could only be exercised upon enemy and neutral merchant ships.

1. "The right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation."

The Maria, (1799). 1 C. Rob., 340.

1. Enemy hospital ships may also be visited and searched.

Article 4. "The belligerents shall have the right to control and search them (hospital ships); they can refuse to help them, order them off, make them take a certain course, and put a Commissioner on board; they can even detain them, if important circumstances require it."

III Hague Convention, (1899). Malloy, II, 2038 X
Hague Convention, (1907). Malloy, II, 2333-4.

2. "* * * according to the principles universally acknowledged, a belligerent warship has, as a general rule and except under special circumstances, the right to stop a neutral commercial vessel in the open sea * * *."

The Carthage. Scott, *Hague Court Reports*, (1916), 330.

3. Article 1. "(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized."

Treaty concluded at the Washington Naval Conference in Relation to the Use of Submarines and Noxious Gases in Warfare, (1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

With the development of the airplane visit and search not only was exercised over enemy and neutral merchant ships but the right was extended also to enemy and neutral non-military airplanes.

1. Article 1. "A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized."

Treaty Concluded at the Washington Naval Conference in Relation to the Use of Submarines and Noxious Gases in Warfare, (1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

2. Article 49. "Private aircraft are liable to visit and search and to capture by belligerent military aircraft."

General Report of the Commission of Jurists at the Hague, (1923). 17 *A. J. I. L.*, (1923), *Supp.*, 257.

3. Article 1. "1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship * * *."

Convention on Maritime Neutrality between United States and Other American Republics, (1928). *United States Treaty Series*, No. 845, 2.

4. Article 52. "Neutral non-military aircraft, while upon the surface of the water, shall, for purposes of visit and search, be treated as surface vessels."

Article 111. "(1) Uncertified neutral private aircraft are subject to visit and search by belligerent commissioned military aircraft."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). 33 *A. J. I. L.*, (1939), *Supp.*, 185, 197.

5. "On October 9th, 1939, the American merchant steamer *City of Flint* was visited and searched by a German cruiser at an estimated distance of 1,250 miles from New York."

"The original visit and search and seizure of the *Flint* by the German warship, the placing of the prize crew on board, and the conduct of that crew were apparently all in accord with law."

United States Naval War College, *International Law Situations*, 1939, 24, 25.

Forcible measures may be taken to overcome resistance by armed merchant vessels to visit and search. Enemy armed merchant ships may be sunk on sight.

1. Article 63. "Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel."

Declaration of London, (1909). *British Parliamentary Papers*, Misc. No. 4, (1909), (Cd. 4554), 89.

2. "2. If an armed enemy merchant vessel offers armed resistance against measures taken under the law of prize, such resistance is to be overcome with all means available. The enemy government bears all responsibility for any damages to the vessel, cargo, and passengers."

Schedule to Prize Code (German), 1914. Huberich and King, *The Prize Code of the German Empire*, (New York, 1915), 75.

3. "45. If the summoned vessel resists or takes to flight she may be pursued and brought to, by forcible measures, if necessary."

Instructions for the Navy of the United States Governing Maritime Warfare, (June 1917), 21.

4. Article 1. "A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after seizure."

Treaty Concluded at the Washington Naval Conference in Relation to the Use of Submarines and Noxious Gases in Warfare, 1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

5. Article 22. "The following are accepted as established rules of International law:

(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject.

(2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board."

Treaty between the United States and Other Powers for the Limitation and Reduction of Naval Armament (1930). *United States Treaty Series*, No. 830, 27. Also the proces-verbal (1936), 173 *League of Nations Treaty Series*, 353.

6. "The United States regarded resistance or flight as ground for using force sufficient to cause the merchant vessel to lie to . . . but not a ground for sinking the vessel.

Of course the . . . vessel might be sunk in the exercise of the right, but the use of force was held to be restricted to that necessary to bring the vessel to, and forcible resistance by the merchant vessel was not in itself a ground for sinking (it) but a just ground for its condemnation."

United States Naval War College, *International Law Situations*, 1938, 50.

7. Article 53. "(2) If the vessel when summoned does not stop, attempts to escape, or resists visit and search, it may be compelled to stop by force and the belligerent shall not be responsible for resulting injury to life or property."

Article 54. "(3) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface or submarine, or a military aircraft, may not sink or render incapable of navigation an unarmed merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or by the presence of another vessel which is in a position to take them on board."

Article 55. "In their action with regard to enemy armed merchant vessels, belligerent warships, whether surface or submarine, and belligerent military aircraft are governed by the rules applicable to their action with regard to enemy warships."

Article 109. "(1) A belligerent commissioned military aircraft may signal a vessel to stop as by radio, or by firing a machine gun burst across its bows."

"(4) If the vessel when summoned does not stop, attempts to escape, resists visit and search, or does not proceed according to instruction, it may be compelled by force to stop and the belligerent shall not be responsible for resulting injury to life or property."

Article III. "(1) Uncertified neutral private aircraft are subject to visit and search by belligerent commissioned military aircraft.

"(2) Such belligerent aircraft may order such neutral aircraft to alight for visit and search in a locality reasonably safe and accessible.

"(3) Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination, exposes an aircraft to the risk of being fired upon."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School), 33 *A. J. I. L.*, (1939), *Supp.*, 185, 186, 197.

Neutral vessels under convoy of vessels of war of their own nationality cannot be visited and searched.

1. "Article 61. Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained and their cargoes, which could be obtained by search."

Declaration of London, 1909. Not ratified. *British Parliamentary Papers*, Misc. No. 4, (1909) (Cd. 4554), 89.

2. "51. Neutral vessels under convoy of vessels of war of their own nationality are exempt from search. The commander of the convoy gives orally or in writing, at the request of the commander of a belligerent ship of war, all information regarding the vessels and their cargoes which could be obtained by visit and search.

"52. If the commander of the United States vessel has reason to suspect that the commander of the convoy has been deceived regarding the innocent character of any of the vessels (and their cargoes or voyages) under his convoy, the former officer shall impart his suspicions to the latter. In such a case it is to be expected that the commander of the convoy will undertake an examination to establish the facts. The commander of the convoy alone can conduct this investigation, the officers of the United States visiting vessel can take no part therein."

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 23.

3. Article 56. "A belligerent warship may not visit and search vessels under neutral convoy. The commander of a convoy shall, upon request of the commander of a belligerent warship, give, by radio or otherwise, all information as to the character of the vessels and their cargoes which could be obtained by visit and search."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School), 33 *A. J. I. L.*, (1939), *Supp.*, 186.

4. Article 34. "(1) Neutral vessels under convoy of their own warships are not liable to visit and search.

"(2) The commander of the convoy may, however, be requested to give information and assurances regarding the character of the vessels in his charge and their cargoes."

German Prize Law Code, (1939). Hackworth, G. H., *Digest of International Law*, (Washington, 1943), Vol. VII, 212.

5. *Time.*

Visit and search may be exercised only after the beginning of war.

1. "This right (of visit and search) is strictly a belligerent right allowed by the general consent of nations in time of war, and limited to those occasions."

The Marianna Flora, (1826), Wheat., 42.

2. "The belligerent right of search may be exercised without previous notice, upon all neutral vessels after the beginning of war * * *.

Instructions to U. S. Blockading Vessels and Cruisers, General Orders, No. 492, (June 20, 1898).

United States Foreign Relations, 1898, 781.

3. "42. The belligerent right of visit and search * * * may be exercised * * * after the beginning of war * * *."

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 21.

All unarmed neutral and enemy sea and air craft must first be called upon to stop and submit to

visit and search before force may be used for their capture or destruction.

1. In the cases of the destruction of the neutral American vessels, the *Gulflight* and the *Nebraskan*, by submarine and without warning, Germany admitted liability, claiming that the action was the result of a mistake.

United States Foreign Relations, 1915, 439, 468.

1. In the past, there has been a qualified right of visit and search in time of peace in the case of vessels suspected of offenses of piracy or violations of slave trade, prohibition, fisheries, or pelagic sealing treaties. With the exception of action taken under the provisions of special conventions in regard to fisheries, visit and search in modern times has not been customary in time of peace.

1. *The Marianna Flora*, (1826), 11 Wheat. 1.

2. *The Antelope*, (1825), 10 Wheat. 66.

3. Art. 2, Convention between the United States and Chile for the Prevention of Smuggling of Intoxicating Liquors, (1930). United States Treaty Series, No. 829, 2. Many similar treaties were signed between 1924 and 1933.

4. Fur Seal Convention, (1911), 37 Stat. 1538. Malloy, *Treaties, Conventions*, III, 2629.

2. "45. If the summoned vessel resists or takes to flight she may be pursued and brought to, by forcible measures, if necessary."

"97. In no case after a vessel has been brought to may it be destroyed until after a visit and search has been made and all persons on board have been placed in safety, and also, if practicable, their personal effects."

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 21, 35.

3. Article 1. "(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

"A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after capture."

Treaty Concluded at the Washington Naval Conference in Relation to the Use of Submarines and Noxious Gases in Warfare, (1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

4. Article 1. "If the merchant ship does not heed the signal to stop it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it."

Convention on Maritime Neutrality between United States and Other American Republics, (1928). *United States Treaty Series*, No. 845, 3.

5. Article 109. "If the vessel when summoned does not stop, attempts to escape, resists visit and search, or does not proceed according to instructions, it may be compelled by force to stop and the belligerent shall not be responsible for resulting injury to life and property."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). 33 *A. J. I. L.*, (1939), *Supp.*, 197.

6. "I am under the necessity of bringing to the attention of Congress the ruthless sinking by a German submarine on May 21 of an American ship, the *Robin Moor*, in the south Atlantic Ocean * * * while the vessel was on the high seas en route to South Africa.

"According to the formal depositions of survivors the vessel was sunk within 30 minutes from the time of the first warning given by the commander of the submarine to an officer of the *Robin Moor*."

"It was sunk despite the fact that its American nationality was admittedly known to the Commander of the submarine and that its nationality was likewise clearly indicated by the flag and other markings."

Message from President Roosevelt to Congress, June 20, 1941.

United States Naval War College, *International Law Documents*, 1940, 237.

7. In 1941 a German submarine torpedoed and shelled without warning the S. S. *Sessa*, an American ship under Panamanian registry, and a German aircraft sank without

warning *The Steelfarer*, an American vessel. President Roosevelt denounced this German practice of sinking without warning as being in contravention to International Law.

Address by the President, Sept. 11, 1941. United States Naval War College, *International Law Documents*, 1941, 15-16.

6. *Place.*

Visit and search can be exercised only on waters and in air outside of neutral jurisdiction.

1. "The right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation."

The Maria, (1799). 1 C. Rob., 340.

2. Article 2. "Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden."

XIII Hague Convention (1907). Malloy, *Treaties, Conventions*, Vol. II, 2359.

3. "* * * according to the principles universally acknowledged, a belligerent war-ship has, as a general rule and except under special circumstances, the right to stop a neutral commercial vessel in the open sea * * *."

The Carthage, Scott, *Hague Court Reports*, (1916), 330.

4. "(6) A belligerent warship has, incidental to the right of seizure, the right to visit and search all vessels on the high seas for the purpose of determining the hostile or innocent character of the vessels and their cargoes."

Memorandum of the Secretary of State, (April 24, 1916), *United States Foreign Relations*, 1916, 247.

5. "12. All acts of hostility, including capture and the exercise of the right of visit and search, committed by belligerent ships of war in the territorial waters of a neutral

Treaty Concluded at the Washington Naval Conference in Relation to the Use of Submarines and Noxious Gases in Warfare, (1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

4. Article 1. "If the merchant ship does not heed the signal to stop it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it."

Convention on Maritime Neutrality between United States and Other American Republics, (1928). *United States Treaty Series*, No. 845, 3.

5. Article 109. "If the vessel when summoned does not stop, attempts to escape, resists visit and search, or does not proceed according to instructions, it may be compelled by force to stop and the belligerent shall not be responsible for resulting injury to life and property."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). 33 *A. J. I. L.*, (1939), *Supp.*, 197.

6. "I am under the necessity of bringing to the attention of Congress the ruthless sinking by a German submarine on May 21 of an American ship, the *Robin Moor*, in the south Atlantic Ocean * * * while the vessel was on the high seas en route to South Africa.

"According to the formal depositions of survivors the vessel was sunk within 30 minutes from the time of the first warning given by the commander of the submarine to an officer of the *Robin Moor*."

"It was sunk despite the fact that its American nationality was admittedly known to the Commander of the submarine and that its nationality was likewise clearly indicated by the flag and other markings."

Message from President Roosevelt to Congress, June 20, 1941.

United States Naval War College, *International Law Documents*, 1940, 237.

7. In 1941 a German submarine torpedoed and shelled without warning the *S. S. Sessa*, an American ship under Panamanian registry, and a German aircraft sank without

warning *The Steelfarer*, an American vessel. President Roosevelt denounced this German practice of sinking without warning as being in contravention to International Law.

Address by the President, Sept. 11, 1941. United States Naval War College, *International Law Documents*, 1941, 15-16.

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5. "12. All acts of hostility, including capture and the exercise of the right of visit and search, committed by belligerent ships of war in the territorial waters of a neutral

power, constitute a violation of neutrality and are strictly forbidden."

Instructions for the Navy of the United States (June, 1917), 13.

6. "42. The belligerent right of visit and search may be exercised outside of neutral jurisdiction * * *."

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 21.

7. "Commanders of all Naval vessels shall whenever possible take necessary steps to assure themselves of the character of all vessels sighted on the high seas in accordance with international law and usage."

Alnva No. 78, May 21, 1918. 1918 *Foreign Relations, Supp.* 1, Vol. II, 934.

8. Article 1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship * * *."

Convention on Maritime Neutrality between the United States and Other American Republics, (1928) *United States Treaty Series*, No. 845, 2.

9. Article 49. "(1) A belligerent has the right of visit and search on and over the high seas and on and over territorial waters that are not neutral."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). 33 *A. J. I. L.*, (1939), *Supp.*, 184.

7. *Diversion.*

Prior to the World War, visit and search was exercised "sur place"; diversion for search or visit and search, although not expressly prohibited, was uncommon.

1. "Thirdly another right accrued, that of bringing in for a more deliberate inquiry than could possibly be conducted at sea upon such a number of vessels, even those which professed to carry cargoes with a neutral destination * * *."

The Maria, (1799), C. Rob., 340.

2. Article 196. "In exercising the right of visit, the Commander should be careful to occasion to the vessel no delay

or deviation from her course that can be avoided, and generally to conduct the visit in a manner as little vexatious as possible."

British Manuel of Prize Law. (1888). *Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School), 33 *A. J. I. L.*, (1939), *Supp.*, Comment, 583.

3. "81. In the case of the stoppage and search of a vessel under a neutral flag, the commander must endeavor to avoid bringing the vessel out of the course of her voyage."

"85. If by reason of the weather conditions it is not possible to send out a boat, the commander may, in case there is grave suspicion, order the vessel to follow a prescribed course, and follow with the war vessel, until it is possible to carry out the search."

"91. Where it appears that a search is necessary, but the same cannot be accomplished at the time, the vessel is to be searched at a subsequent time at a suitable place. If by reason of this fact the vessel is subjected to substantial losses, the commander shall proceed to a provisional capture."

German Prize Ordinance of 1909, as in force July 1, 1915. Huberich and King, *The Prize Code of the German Empire*, New York, (1915), 50, 51-2, and 54.

4. "In regard to search at sea, an examination of the instructions issued to naval commanders of the United States, Great Britain, Russia, Japan, Spain, Germany, and France from 1888 to the beginning of the war shows that search in port was not contemplated by the Government of any of these countries. On the contrary, the context of the respective instructions shows that search at sea was the procedure expected to be followed by the commanders. All of these instructions impress upon the naval officers the necessity of acting with the utmost moderation—and in some cases commanders are specifically instructed—in exercising the right of visit and search, to avoid undue deviation of the vessel from her course."

Secretary of State to the Ambassador in Great Britain, Oct. 21, 1915. *United States Foreign Relations*, 1915, *Supp.*, 579.

In the World War, most of the belligerents practiced deviation for search, claiming that searching modern vessels under modern conditions of warfare was too difficult or dangerous to undertake upon the high seas.

1. "If vessels carrying such cargoes for Swedish ports will call at a British port, such as Falmouth, Lough Swilly, or Kirkwall, on their way, notice will be sent to the fleet which will prevent their being searched or stopped at sea, provided of course they do not commit any unneutral act.

"In fact, if all vessels for Scandinavian ports will call at a British port on their way, it will avoid the delay and inconvenience of being stopped at sea."

British Secretary of State for Foreign Affairs to the British Minister at Stockholm, Oct. 14, 1914. *United States Foreign Relations*, 1914, *Supp.*, p. 323.

2. "9. Suspect ships are to be searched, and, according to the result of the search, either released, brought into port, or captured. Since, however, for military reasons or because of the nature of the cargo, search can seldom be carried out at sea, it is advisable for suspect ships at once to be brought into a German port in order to undergo a more thorough search. In such cases a ship shall only be declared captured if during her voyage to a German port it is necessary to take her through neutral territorial waters."

Revised German Prize Ordinance (1916). United States Naval War College, *International Law Documents*, 1925, 32.

3. "It is reported that the *Wolf*, a German armed steamer operating in the Pacific in 1916-1917 as a commerce raider, had a plane attached to it, the *Wolfchen*, which located vessels and diverted them to the mother ship. Thus, on May 27, 1917, while the *Wolf* was making repairs near an uninhabited island, the *Wolfchen* was sent out to bring in a vessel which had been sighted, and dropped orders on the deck of the vessel, the *Wairuna* of New Zealand, which was brought to anchor near the *Wolf*."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). *Comment.* 33 *A. J. I. L.*, (1939), *Supp.* 587.

4. "The French frequently practiced diversion for search. Thus, in *The Federico*, a Spanish vessel was met by a French destroyer, and since visit could not take place at once because of the condition of the sea, conducted to Toulon and there visited and searched."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School) *Comment* 33 *A. J. I. L.*, (1939), *Supp.*, 587.

5. "* * * it would be impossible under the conditions of modern warfare to confine the rights of visit and search to an examination of the ship at the place where she is encountered without surrendering a fundamental belligerent right."

Quoting Admiral Sir John Jellicoe's report,

"It is undoubtedly the case that the size of modern vessels is one of the factors which renders search at sea far more difficult than in the days of smaller vessels.

"There are other facts, however, which render it necessary to bring vessels into port for search. The most important is the manner in which those in command of German submarines, in entire disregard of international law and of their own prize regulations, attack and sink merchant vessels on the high seas, neutral as well as British, without visiting the ship and therefore without any examination of the cargo. This procedure renders it unsafe for a neutral vessel which is being examined by officers from a British ship to remain stopped on the high seas, and it is therefore in the interests of the neutrals themselves that the examination should be conducted in port.'"

A memorandum from Sir Edward Grey given by the British Ambassador to the United States Secretary of State, April 24, 1916. *United States Foreign Relations*, 1916, *Supp.*, 369, 370.

6. "A vessel which is encountered at sea on her way to or from a port in any neutral country afforded means of access to the enemy territory without calling at a port in British or Allied territory shall until the contrary is estab-

lished be deemed to be carrying goods with an enemy destination or of enemy origin and shall be brought in for examination and if necessary for adjudication before the prize court.

"2. Any vessel carrying goods with an enemy destination or of enemy origin shall be liable to capture and condemnation in respect of the carriage of such goods provided that in the case of any vessel which calls at an appointed British or Allied port for the examination of her cargo no sentence of condemnation shall be pronounced in respect only of the carriage of goods of enemy origin or destination and no such presumption as is laid down in Article J shall arise.

"3. Goods which are found on the examination of any vessel to be goods of enemy origin or of enemy destination shall be liable to condemnation."

British Order in Council of 1915 as modified by proclamation, Feb. 16, 1917. *United States Foreign Relations*, 1917, *Supp.* 1, p. 493.

The United States, as well as other neutral countries, protested against this belligerent practice.

1. "The United States Government feels obliged to request that the method of detention followed in these instances for the purpose of procuring guaranties or further evidence should be discontinued, and that the visit and search of vessels be made at sea with the greatest expedition possible under the circumstances."

Acting Secretary of State to the British Ambassador, Nov. 7, 1914. *United States Foreign Relations*, 1914, *Supp.*, 340.

2. "The Government of the United States readily admits the full right to visit and search on the high seas the vessels of American citizens or other neutral vessels carrying American goods and to detain them *when there is sufficient evidence to justify a belief that contraband articles are in their cargoes*; but His Majesty's Government, judging by their own experience in the past, must realize that this Government cannot without protest permit American ships or American cargoes to be taken into British ports and their detained for the purpose of searching generally for evidence

of contraband, or upon presumption created by special municipal enactments which are clearly at variance with international law and practice."

Secretary of State to the Ambassador in Great Britain, Dec. 26, 1914. *United States Foreign Relations, 1914, Supp.*, 374-5.

3. "While admitting established right of visit and search and reasonable liberality in its exercise, the United States cannot yield to the seizure of American ships or American-owned cargo in neutral ships on the high seas to be taken to belligerent ships for examination in search of evidence of contraband, where the captor is not in possession of evidential facts creating a legal presumption or just suspicion that the ship is engaged in illegitimate trade, or that contraband cargo is aboard. If report of consular agent Swinemunde is correct you will make known these views to German Government and advise consuls and consular agents accordingly."

Secretary of State to Ambassador in Germany, Aug. 17, 1915. *United States Foreign Relations, 1915, Supp.* 515.

After the United States became a belligerent in the World War, American agreements like the British were made with the neutrals for "voluntary" calls at Allied ports by neutral vessels for search.

1. "Replying to your request for information as to the nature of the participation of American naval officers in the British practice with respect to the searching and routing of neutral vessels, I have to state that American naval forces in European waters have been engaged largely in anti-submarine operations and in escorting convoys. The belligerent right of visit and search has been exercised on the high seas everywhere in accordance with *Instructions for the Navy of the United States Governing Maritime Warfare, June, 1917*, except that boarding vessels are not required to make entries in ships' logs where such entries would give information facilitating unlawful attack by

enemy submarines. Mandatory routing of neutral merchant vessels has not been practiced by our Navy."

Secretary of Navy to Secretary of State, July 5, 1918. *United States Foreign Relations*, 1918, *Supp.* 1, vol. II, 924-5.

2. "* * * there is no record in the Navy Department of any case of search and seizure by the vessels of the United States Navy of the kind contested in the American note of October 1, 1915, found in *Foreign Relations*, 1915, Supplement, 578-589 (in regard to diversion for search)."

Secretary of Navy to the Secretary of State. *United States Foreign Relations*, 1918, *Supp.* 1, vol. II, 934.

3. "V. No application for 'bunkers' (stores, supplies, and bunker fuel) by any neutral ship shall be approved unless the person or persons owning, managing, chartering, or controlling such vessel shall enter into an agreement in a form to be approved by the War Trade Board, agreeing to comply with and be bound by each and all of the following regulations. Failure to comply with any of these regulations in the case of any one vessel may involve the refusal of 'bunkers' to all of the vessels of the particular person, firm, or corporation managing, owning, chartering, or controlling the vessel in question."

"(e) Every vessel which proceeds from or to the United States, to or from Norway, Sweden, Denmark (including Iceland and the Faroe Islands), Holland, Spain, or to or from any neutral port in the Mediterranean Sea, shall call for examination as may be directed by the War Trade Board."

General Rules Number 1, Governing Granting Licenses for Bunker Fuel, Port, Sea, and Ship's Stores and Supplies, Issued by the War Trade Board, Jan. 19, 1918. *United States Foreign Relations*, 1918, *Supp.* 1, vol. II, 947-8.

The instructions for the United States Navy in 1917 did not permit diversion.

4. "48. If the papers do not furnish conclusive evidence of the innocent character of the vessel, the cargo, and voyage, or probable cause for capture, the boarding officer shall continue the examination by questioning the personnel or by

searching the vessel or by examining the cargo. If such further examination furnishes satisfactory evidence of innocence, the vessel shall be released; otherwise she shall be seized and sent in for adjudication."

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 22.

Documents and practice since the World War indicate that with the rapid development of the airplane and submarine maritime nations have come to accept diversion for *search after visit* and under certain conditions for *visit and search*.

1. Article 40. "Aircraft on board vessels of war, including aircraft-carriers, shall be regarded as part of such vessel."

General Report of the Commission of Jurists at the Hague, (1923). 17 *A. J. I. L.*, (1923), *Supp.*, 255. Also, *Draft Convention on Rights and Duties of Neutral States in Naval and Aerial War*. Art. 3. 33 *A. J. I. L.*, *Supp.* (1939), 176.

2. "A certain degree of deviation for visit and search has always been admitted as lawful. Such deviation has been common when, because the state of the sea made it impossible to visit and search when the summoned vessel has come to, the vessel is escorted to a safer place. This is not an arbitrary act of the visiting vessel. The ordering of a neutral vessel to go to port for examination' as has been proposed at times in an exercise of authority which a belligerent craft does not possess.

"A surface or submarine vessel of war is not to be allowed to deviate a vessel from its course unless a prize crew is put on board or an escort is furnished. A mere order is of no effect, as the merchant vessel is not subject to the orders but may be under the physical control of a vessel of war so long as that is effective. Until other rules are accepted, this principle would apply to aircraft."

United States Naval War College, *International Law Situations*, 1930, 112.

3. "Art. 107. If, without furnishing grounds for seizure or capture, the visit to a ship gives rise to, or does not remove, a reasonable ground for suspecting the ship to be liable to

nature of the vessel which is to perform the visit or of the vessel to be visited."

Article 62. "Instructions as to course for the purpose of search are admissible if:

1. There are still strong reasons for suspicion after the visit has been made and
2. The searching of the vessel on the spot is impossible or inexpedient."

Article 63. "(1) A vessel which does not obey the instructions as to course can be compelled to do so by force. (2) It is liable to capture."

German Prize Law Code of Aug. 28, 1939. Hackworth, G. H., *Digest of International Law*, (1943), vol. VII, 196.

8. "It was explained at the Department of State that injury to American vessels destined to European ports has not resulted in the main from their diversion from the high seas to belligerent ports. As a general practice, for reasons of their own, the vessels which cleared from ports of the United States on or before November 4, the effective date of the Neutrality Act of 1939, ordinarily put into belligerent ports en route to their destinations, and the principal thus far has arisen in connection with delay involved on the examination of the vessels and their cargoes before being permitted to proceed on their voyages."

Department of State press release, Dec. 15, 1939. *The Department of State Bulletin*, Dec. 16, 1939, Vol. I, No. 25, Publication 1415, 696.

9. "It was suggested in that note that neutral vessels en route to certain countries should voluntarily call at one of the several 'contraband control' bases designated by your Government in order that the examination of their cargoes might be facilitated, by examination in port rather than on the high seas. Since, pursuant to the Act of Congress approved November 4, 1939, and the President's Proclamation of the same date, it becomes illegal for American vessels to enter the so-called combat zone about the British Isles and the Northern coast of Europe, they are thereby precluded from voluntarily entering the 'contraband control' bases within the combat zone, and Your Excellency's

note is understood as undertaking to reserve a right of your Government to divert American vessels to such bases, by force if necessary acting, in that respect, without regard to the municipal law of the United States or the rights, obligations, and liabilities of American vessels under that law."

"It is my belief that such a spirit of liberality on the part of American shipping interests should be met by a corresponding degree of accommodation and flexibility on the part of the British Government, and that such mutual deferences should avoid giving rise to any occasion for the forcible diversion of such American vessels to those belligerent ports which they are by the law of the United States prohibited from entering."

The Secretary of State to the British Ambassador in Washington, Dec. 14, 1939. *The Department of State Bulletin*, Jan. 6, 1940, Vol. II, No. 28, Publication 1422, 4.

10. "This Government feels constrained to express its serious concern at the treatment by the British authorities of American shipping in the Mediterranean area, and particularly at Gibraltar. It has already made clear its position as regards the legality of interference by the British Government with cargoes moving from one neutral country to another, in its Ambassador's Note number 1569 of November 20, 1939. In addition, it now regrets the necessity of being forced to observe not only that British interference, carried out under the theory of contraband control, has worked a wholly unwarrantable delay on American shipping to and from the Mediterranean area; but also that the effect of such action appears to have been discriminatory."

Aide Memoire from the United States to Great Britain, Jan. 20, 1940. *The Department of State Bulletin*, Jan. 27, 1940, Vol. II, No. 31, Publication 1428. 93.

A British royal proclamation on Sept. 8, 1939, established five control bases: Kirkwall, Weymouth, The Downs, Gibraltar, and Haifa. Vessels bound for enemy territory or ports in neutral

countries from which goods can conveniently be forwarded to enemy territory were "urgently advised to call voluntarily" at one of these bases. Vessels which do not call voluntarily are liable to be diverted to a base in cases where adequate search at sea is not practicable. The British Ministry of Information later added that the practice of the British navy would be to board the merchant ship for examination of its papers. When this is found impracticable because of the weather or other reasons, the neutral vessel might be taken into a harbor.

In the first ten weeks of World War II, 900 ships were examined at British control bases. Of these, forty-two were American ships. All American ships were eventually released.

1. "In a note of November 9, 1939 the British Ambassador recalled his Government's announced intention to use its belligerent rights to the full and referred to the 'liability' of merchant vessels to be diverted to a contraband-control base in the event that they did not call at such base voluntarily."

Hackworth, G. H., *Digest of International Law*, (1943), Vol. VII, 196.

The current trend indicates that if for any reason search at sea is impracticable, the vessel may be escorted by the summoning vessel or another vessel to the nearest place where search may conveniently be made. The vessel must proceed according to the orders of the escorting vessel but should not be required to lower her flag.

Similarly, if circumstances make visit and search impracticable, a belligerent military aircraft may order a neutral civil craft, subsurface, surface or air, to proceed under escort as directed.

II. Destruction of Prizes

1. *Enemy Prizes.*

Since title to a captured enemy vessel vests in the captor's government by virtue of the fact of capture, enemy ships made prizes may in case of military necessity be destroyed by the capturing officer when they cannot be sent or escorted in for adjudication, provided that the ship's papers and documents, the passengers and crew, and, if practicable, their personal effects, are placed in safety.

1. Article 14. "In case of military or other necessity, merchant vessels of an enemy may be destroyed, or they may be retained for the service of the Government."

Article 50. "If there are controlling reasons why vessels that are properly captured may not be sent in for adjudication—such as unseaworthiness, the existence of infectious disease, or the lack of a prize crew—they may be appraised and sold, and if this cannot be done, they may be destroyed. The imminent danger of recapture would justify destruction if there should be no doubt that the vessel was a proper prize. But in all such cases all of the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered.

The United States Naval War Code of 1900. United States Naval War College, *International Law Discussions*, 1903; 53, 88.

2. Article XCI. "In the following cases, and when it is unavoidable, the captain of the man-of-war may destroy a captured vessel or dispose of her according to the exigency of the occasion. But before so destroying or disposing of her he shall transship all persons on board, and as far as possible the cargo also, and shall preserve the ship's papers and all other documents required for judicial examination:

"(1) When the captured vessel is in very bad condition, and cannot be navigated on account of the heavy sea.

"(2) When there is apprehension that the vessel may be recaptured by the enemy.

"(3) When the man-of-war cannot man the prize without so reducing her own complement as to endanger her safety."

Japanese Regulations, 1904. United States Naval War College, *International Law Documents*, 1925, 74-5.

3. Article 1. "During a war the commander of H. M. ships of war have the right to stop and search enemy and neutral merchant vessels, and to seize—and, in exceptional cases, to destroy—the same, together with the enemy and neutral goods found thereon."

German Prize Code (1909) as in force July 1, 1915.

Huberich and King, *The Prize Code of the German Empire*, (New York, 1915), 1.

4. Article 122. "A captured enemy vessel may be destroyed if the taking of such vessel to a Japanese port is considered to involve danger to the ship of war or to the success of her operations."

Article 123. "Before destroying a vessel (enemy) under the preceding article, the commanding officer of the warship must remove all the persons on board to a safe place and must take on board his ship all the papers necessary for trial of the vessel."

Japanese Regulations, 1914. United States Naval War College, *International Law Documents*, 1925, 78-9.

5. "The sinking of prizes is in itself a questionable act to be resorted to only in extraordinary circumstances and after provision has been made for the safety of all the crew or passengers, if there are passengers on board. The responsibility for discriminating between neutral and enemy vessels, and between neutral and enemy cargo, obviously rests with the attacking ship, whose duty it is to verify the status and character of the vessel and cargo and to preserve all papers before sinking or even capturing it. So also is the humane duty of providing for the safety of the crews of merchant vessels, whether neutral or enemy, an obligation upon every belligerent."

British-French memorandum to the neutral States, Mar. 1, 1915. *United States Foreign Relations*, 1915, *Supp.*, 127.

6. "5. If visit and search disclose that the vessel is of belligerent nationality, the vessel may be sunk only if it is impossible to take it into port, *provided* that the persons on board are put in a place of safety and loss of neutral property is indemnified.

"NOTE: (a) A place of safety is not an open boat out of sight of land.

"(b) A place of safety is not an open boat, if the wind is strong, the sea rough, or the weather thick, or if it is very cold.

"(c) A place of safety is not an open boat which is overcrowded or is small or unseaworthy or insufficiently manned."

U. S. Secretary of State to Ambassador in Germany, April 28, 1916. *United States Foreign Relations*, 1916, *Supp.*, 252.

7. "94. An enemy ship made prize may be destroyed by the capturing officer in case of military necessity, when the vessel can not be sent or brought in for adjudication.

"95. Engaging in unneutral service as defined in paragraph 39 stamps a neutral vessel with hostile character, and such a neutral vessel made prize may be destroyed by the capturing officer in the case of military necessity, when the vessel cannot be sent or brought in for adjudication."

"97. In no case after a vessel had been brought to may it be destroyed until after visit and search has been made and all persons on board have been placed in safety, and also, if practicable, their personal effects.

"All the documents, letters, and papers found on board the prize shall be taken on board the capturing vessel of war and be inventoried and sealed in accordance with the procedure of section 4615, Revised Statutes (see page 28) for delivery to the prize court, with especial view to the protection of the interests of the owners of any innocent neutral cargo on board. All mails on board should be saved so far as possible and practicable."

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 35.

8. "There is, of course, no doubt as to the right to make prize of an enemy ship on the high seas, and, under certain conditions, to destroy her, and equally no doubt of the obligation to safeguard the lives of all persons aboard, whether passengers or crew."

The Lusitania, 251 Fed. 734 (S. D. N. Y., 1918).

9. Article 1. "(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

"A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after seizure.

"A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

"(2) Belligerent submarines are not under any circumstance exempt from the universal rules above stated; and if a submarine cannot capture a merchant vessel in conformity with these rules, the existing law of nations requires it to desist from attack and to permit the merchant vessel to proceed unmolested."

Treaty Concluded at the Washington Naval Conference in Relation to the Use of Submarines and Noxious Gases in Warfare, (1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

10. Article 57. "Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved."

General Report of the Commissions of Jurists at the Hague, (1923). 17 *A. J. I. L.*, (1923), *Supp.*, 259.

11. Article 1. "The following rules shall govern commerce in time of war:

"1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship with the object of ascertaining its character and nationality and of verifying

whether it conveys cargo prohibited by international law or has committed any violation of blockade. If the merchant ship does not heed the signal to stop, it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it.

"The ship shall not be rendered incapable of navigation before the crew and passengers have been placed in safety.

"2. Belligerent submarines are subject to the foregoing rules."

Convention on Maritime Neutrality between the United States and Other American Republics, (1928).

United States Treaty Series, No. 845, 2-3.

12. Article 22. "The following are accepted as established rules of International Law:

"(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject.

"(2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board."

Treaty between the United States and Other Powers for the Limitation and Reduction of Naval Armament (1930). *United States Treaty Series*, No. 830, 27. Also the proces-verbal, (1936). 173 *League of Nations Treaty Series*, 353.

13. The International Agreement for Collective Measures against Piratical Attacks in the Mediterranean by Submarines signed at Nyon on Sept. 14, 1937 invoked the rules stated in the Treaty between the United States and Other Powers for Limitation and Reducation of Naval Armament, (1930), and in the proces-verbal of 1936.

The United Kingdom of Great Britain and Northern Ireland, Bulgaria, Egypt, France, Greece, Rumania, Turkey, the Union of Soviet Socialist Republics, and Yugoslavia were signatories.

United States Naval War College, *International Law Situations*, 1938, 100-103.

The same rules were applied to aircraft through the following provision of the Supplementary Agreement to the Nyon Arrangement:

"II. The present Agreement applies to any attack by a surface vessel or an aircraft upon any merchant vessel in the Mediterranean not belonging to either of the conflicting Spanish parties, when such attack is accompanied by a violation of the humanitarian principles embodied in the rules of international law with regard to warfare at sea, which are referred to in Part IV of the Treaty of London of April 22nd, 1930, and confirmed in the Protocol signed in London on November 6th, 1936."

United States Naval War College, *International Law Situations*, 1938, 104.

14. Article 54. "(3) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface or submarine, or a military aircraft, may not sink or render incapable of navigation an unarmed merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or by the presence of another vessel which is in a position to take them on board."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War (Harvard Law School). 33 *A. J. I. L.* (1939), *Supp.*, 186.

15. "That a belligerent may lawfully destroy before condemnation enemy vessels captured as prizes, subject to certain conditions, is generally admitted." "It should be noted that among the conditions almost uniformly recognized and carried out, at least before the World War, were those re-

quiring that there be some necessity for the destruction, and that all persons on the vessel to be destroyed be placed in safety."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War (Harvard Law School). *Comment.* 33 *A. J. I. L.* (1939), *Supp.*, 563.

16. Article 72. "Captured enemy vessels may be destroyed if it appears to be inexpedient or unsafe to bring them to port."

Article 74. "(1) The destruction of vessels in accordance with Articles 72 and 73 is admissible only if the passengers, crew, and papers of the vessel have been brought to a place of safety before destruction.

"(2) Ship's boats are not to be regarded as a place of safety unless the safety of passengers and crew under the existing conditions of the sea and the weather is assured by the proximity of land or the presence of another vessel which is able to take them on board."

German Prize Code (1939). Hackworth, G. H., *Digest of International Law* (Washington, 1943). Vol. VII, 255, 248.

The British Legation at Montevideo, Uruguay, announced on Sept. 4, 1939, the first sinking of a German merchant ship in World War II. The German ship, the *Olinda*, was stopped by the *Ajax*, a British cruiser. British officers boarded the *Olinda* and ordered the *Olinda's* officers and crew to abandon ship. The German officers and crew were given time to pack their personal belongings. After the crew had been picked up by a British tanker standing by, the *Ajax* shelled and sank the *Olinda*. The tanker carried the *Olinda's* crew to Montevideo.

If innocent neutral goods are destroyed with the enemy prize, the owner of such goods is entitled to compensation.

1. Article 3. "Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag;"

Declaration of Paris, (1856). (translation)

3. "La marchandise neutre, á l'exception de la contrebande de guerre, n'est par saisissable sous pavillon ennemi;"

British and Foreign State Papers, Vol. 46, (1855-1856), 27.

2. "68. 'Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.'"

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 27. Many bilateral treaties between the United States and foreign states have included this article from the Declaration of Paris, as for example the treaty with Bolivia, (1858), article 16. Malloy, *Treaties, Conventions*, I, 119.

3. Article 53. "If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation."

Declaration of London, (1909). Not ratified. *British Parliamentary Papers*, Misc. No. 4, (1909), (Cd. 4554), 86.

4. "5. If a visit and search disclose that the vessel is of belligerent nationality, the vessel may be sunk only if it is impossible to take it into port, *provided* that the persons on board are put in a place of safety and loss of neutral property is indemnified."

United States Secretary of State to the Ambassador in Germany, Apr. 28, 1916. *United States Foreign Relations*, 1916, *Supp.*, 252.

5. "The British view has been that when an enemy vessel captured as prize is destroyed, the captor must pay for innocent neutral cargo destroyed with the vessel."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). Comment. 33 *A. J. I. L.*, (1939), *Supp.*, 557.

2. Neutral Prizes.

The right to destroy neutral merchant vessels captured as prizes was not generally claimed nor

exercised before the Russo-Japanese War. By 1914, however, the right to destroy neutral prizes was already being claimed by a number of countries subject to the condition that passengers, crews, and the ships' papers be removed to a place of safety.

1. Article 50. "If there are controlling reasons why vessels that are properly captured may not be sent in for adjudication—such as unseaworthiness, the existence of infectious disease, or the lack of a prize crew—they may be appraised and sold, and if this cannot be done, they may be destroyed. The imminent danger of recapture would justify destruction if there should be no doubt that the vessel was a proper prize. But in all such cases all of the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered."

The United States Naval War Code of 1900. United States Naval War College, *International Law Discussions*, 1903, 88.

2. "States have been much less inclined, however, to claim or exercise the right to destroy neutral merchant vessels captured as prizes. Few, if any, instances of such destruction before condemnation prior to the Russo-Japanese War have been found."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). *Comment.* 33 *A. J. I. L.*, (1939), *Supp.*, 563.

3. "There is, thus, no clear record of destruction of a seaworthy neutral vessel not alleged to be guilty of unneutral service prior to the Russo-Japanese War."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). 33 *A. J. I. L.*, (1939), *Supp.*, 564.

4. Article XCI. "In the following cases, and when it is unavoidable, the captain of the man-of-war may destroy a captured vessel or dispose of her according to the exigency of the occasion. But before so destroying or disposing of her he shall transship all persons on board, and as far as possible the cargo also, and shall preserve the ship's papers and all other documents required for judicial examination:

(1) When the captured vessel is in very bad condition, and cannot be navigated on account of the heavy sea.

(2) When there is apprehension that the vessel may be recaptured by the enemy.

(3) When the man-of-war cannot man the prize without so reducing her own complement as to endanger her safety."

Japanese Regulations (1904). United States Naval War College, *International Law Documents*, 1925, 74-5.

5. "Neutral vessels.—If a seized neutral vessel cannot for any reason be brought into port for adjudication, it should be dismissed."

United States Naval War College, *International Law Topics and Discussions*, 1905, 62.

6. "From the opinions, precedents, rules, treaties, etc., thus far stated it is evident that the treatment of neutral vessels in the time of war is not yet a fully settled question."

United States Naval War College, *International Law Situations*, 1907, 106.

7. "Destruction, on account of military necessity, of a neutral vessel guilty only of the carriage of contraband entitles the owner to fullest compensation. Before destruction all persons and papers should be placed in safety."

United States Naval War College, *International Law Situations*, 1907, 108.

8. Article 48. "A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture."

Article 49. "As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time."

Article 50. "Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider

relevant for the purpose of deciding on the validity of the capture must be taken on board the warship."

Article 51. "A captor who has destroyed a neutral vessel must, as a condition precedent to any decision upon the validity of the capture, establish in fact that he only acted in the face of an exceptional necessity, such as is contemplated in article 49. Failing to do this, he must compensate the parties interested without as to whether or not the capture was valid."

Article 53. "If neutral goods which were not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation."

Declaration of London, (1909). Not ratified. *British Parliamentary Papers*. Misc. No. 4, (1909) (Cd. 4554). 86.

9. Article 1. "During a war the commanders of H. M. ships of war have the right to stop and search enemy and neutral merchant vessels, and to seize—and, in exceptional cases, to destroy—the same, together with the enemy and neutral goods found thereon."

Article 113. "When a neutral vessel has been captured under the circumstances set forth in article 39 for carrying contraband, or in articles 77 and 78, for breach of blockade, or in article 51, for rendering unneutral services; the commander may destroy the same, provided that:

(a) the vessel is subject to condemnation, and in addition thereto,

(b) the bringing into port would subject the war vessel to danger, or be liable to impede the success of the operations in which it is at the time engaged. Among other circumstances, this may, *inter alia*, be assumed to be the case, if:

(a) the vessel, on account of its defective condition or by reason of deficiency of supplies, cannot be brought into port; or

(b) the vessel cannot follow the war vessel, and is therefore liable to recapture; or

(c) the proximity of the enemy forces gives ground for a fear of recapture; or

(d) the war vessel is not in a position to furnish an adequate prize crew."

Article 116. "Before proceeding to a destruction of the vessel, the safety of all persons on board, and, so far as possible, their effects, is to be provided for, and all ship's papers and other evidentiary material, which, according to the views of the persons at interest, is of value for the formulation of the judgment of the prize court, are to be taken over by the commander."

Huberich and King, *The Prize Code of the German Empire*, (New York, 1915), 1, 66-7, and 68.

During the World War, most nations tacitly or expressly approved and followed the Declaration of London. Neutral prizes were destroyed only in cases of military necessity and only after passengers, crews, and ships' papers were removed to a place of safety.

1. "The practice of nations in the past, stated generally, has been to sink prizes of war taken on the high seas if either the ship or any part of her cargo was neutral property only when military necessity made this course imperative. This practice has now been embodied, at least in part, in the rules of the Declaration of London, which Germany appears to have adopted for her guidance in the present naval warfares, and on which she has presumably based her action in this instance. It is not to be presumed, however, that the German Government will refuse to grant indemnity for neutral property which has been lost in such manner and which would otherwise have been restored by a court of prize."

Acting Secretary of State to the Secretary of the Coffee Exchange of the City of New York, Oct. 9, 1914. *United States Foreign Relations*, 1914, *Supp.*, 319.

2. Article 126. "A neutral vessel captured and which would be liable to condemnation, may be destroyed, if taking such vessel to a Japanese port would involve danger to the Japanese ship of war or to the success of the operations in which she is at the time engaged."

Article 128. "The commanding officer of a ship of war who has destroyed a neutral vessel must, as a condition precedent to any decision upon the validity of the capture, establish in fact that he only acted in the face of an exceptional necessity such as is contemplated in article 126."

Article 127. "Before the destruction mentioned in the preceding article, the commanding officer of the warship shall remove the persons on board to a place of safety, and all the ship's papers and other documents which are considered relevant for the decision as to the validity of the capture must be taken on board the warship."

United States Naval War College, *International Law Documents*, 1925, 74, 77, and 79.

3. "Germany and Austria-Hungary practiced the destruction of neutral prizes in a large scale, aside from the destruction of vessels in war zones."

"Allied warships, however, generally refrained from destroying neutral vessels." "The British apparently never destroyed any neutral prize."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). *Comment.* 33 *A. J. I. L.*, (1939), *Supp.*, 572, 571.

4. "Germany never seriously asserted a general right to destroy neutral vessels without placing all the persons on board in safety; the indiscriminate sinkings in war zones and elsewhere were said to be justified on the grounds of retaliation and self-preservation."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). *Comment.* 33 *A. J. I. L.*, (1939), *Supp.*, 575.

Cases:

1. Sinking of the *William P. Frye*. *United States Foreign Relations*, 1915, *Supp.*, 360.
2. *The Cysne*.

Lauterpacht, *Annual Digest of Public International Law Cases*, 1929-1930, 487-491.

5. "The sinking of prizes is in itself a questionable act to be resorted to only in extraordinary circumstances and after provision has been made for the safety of all the crew or passengers, if there are passengers on board. The responsibility for discriminating between neutral and enemy vessels, and between neutral and enemy cargo, obviously rests with the attacking ship, whose duty it is to verify the status and character of the vessel and cargo and to preserve all papers before sinking or even capturing it. So also is the humane duty of providing for the safety of the crews of merchant vessels, whether neutral or enemy, an obligation upon every belligerent."

British-French memorandum to the neutral states, March 1, 1915. *United States Foreign Relations*, 1915, *Supp.*, 127.

6. "6. If, however, visit and search disclose that the vessel is of neutral nationality, it must not be sunk in any circumstances, except of gravest importance to the captor's state, and then only in accordance with the above provisos and notes."

Secretary of State to Ambassador in Germany, April 28, 1916. *United States Foreign Relations*, 1916, *Supp.*, 252.

7. "95. Engaging in unneutral service as defined in paragraph 39 stamps a neutral vessel with hostile character, and such a neutral vessel made prize may be destroyed by the capturing officer in the case of military necessity, when the vessel can not be sent or brought in for adjudication.

"96. Owing to the serious responsibility involved, a neutral vessel *not* engaged in unneutral service as defined in paragraph 39, must not be destroyed by the capturing officer save in case of the gravest military emergency which would not justify him in releasing the vessel or sending it in for adjudication. If circumstances permit, it is preferable to appraise and sell the prize, as provided in section 4615, Revised Statutes (see page 28) rather than to destroy it.

"97. In no case after a vessel has been brought to may it be destroyed until after visit and search has been made and all persons on board have been placed in safety, and also, if practicable, their personal effects.

"All the documents, letters, and papers found on board the prize shall be taken on board the capturing vessel of war and be inventoried and sealed in accordance with the procedure of section 4615, Revised Statutes (see page 28) for delivery to the prize court, with especial view to the protection of the interests of the owners of any innocent neutral cargo on board. All mails on board should be saved so far as possible and practicable."

Instructions for the Navy of the United States Governing Maritime Warfare, (June, 1917), 35.

8. "The practice during the World War indicated a general acceptance of the view that destruction of neutral vessels was lawful under certain circumstances, and the provisions of the Declaration of London were openly or tacitly approved by most States, belligerent and neutral."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). Comment. 33 *A. J. I. L.*, (1939), *Supp.*, 571.

Although there has still been some discussion since the World War as to whether or not a neutral prize should be destroyed, practice and documents indicate that the destruction of neutral vessels and aircraft captured as prizes may be destroyed only if warranted by the extreme seriousness of the military situation and by the utter impracticability of bringing the prize in for adjudication. In the case of destruction, passengers (if possible, their personal effects also), the crew, and the craft's papers must be placed in safety.

1. Article 1. "(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

"A merchant vessel must not be attacked unless it refuses to submit to visit and search after warning, or to proceed as directed after seizure.

"A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

"(2) Belligerent submarines are not under any circumstance exempt from the universal rules above stated; and if a submarine cannot capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and to permit the merchant vessel to proceed unmolested."

Treaty Concluded at the Washington Naval Conference in Relation to the Use of Submarine and Noxious Gases in Warfare, (1922). Not ratified. 16 *A. J. I. L.*, (1922), *Supp.*, 58.

2. Article 57. "Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved."

Article 58. "Private aircraft which are found upon visit and search to be neutral aircraft liable to condemnation upon the ground of unneutral service, or upon the ground that they have no external marks or are bearing false marks; may be destroyed, if sending them in for adjudication would be impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. Apart from the cases mentioned above, a neutral private aircraft must not be destroyed except in the gravest military emergency, which would not justify the officer in command in releasing it or sending it in for adjudication."

Article 59. "Before a neutral private aircraft is destroyed, all persons on board must be placed in safety, and all the papers of the aircraft must be preserved.

"A captor who had destroyed a neutral private aircraft must bring the capture before the prize court, and must first establish that he was justified in destroying it under Article 58. If he fails to do this, parties interested in the aircraft or its cargo are entitled to compensation. If the capture is held to be invalid, though the act of destruction is held to have been justifiable, compensation must be paid to the parties interested in place of the restitution to which they would have been entitled."

Article 60. "Where a neutral private aircraft is captured on the ground that it is carrying contraband, the captor may demand the surrender of any absolute contraband on board, or may proceed to the destruction of such absolute contraband, if sending in the aircraft for adjudication is impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. After entering in the log book of the aircraft the delivery or destruction of the goods, and securing, in original or copy, the relevant papers of the aircraft, the captor must allow the neutral aircraft to continue its flight.

"The provisions of the second paragraph of Article 59 will apply when absolute contraband on board a neutral private aircraft is handed over or destroyed."

"General Report of the Commission of Jurists at the Hague, (1923) 17 *A. J. I. L.*, (1923), *Supp.*, 259-260.

3. Article 1. "The following rules shall govern commerce in time of war :

"1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship with the object of ascertaining its character and nationality and of verifying whether it conveys cargo prohibited by international law or has committed any violation of blockade. If the merchant ship does not heed the signal to stop, it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it.

"The ship shall not be rendered incapable of navigation before the crew and passengers have been placed in safety.

"2. Belligerent submarines are subject to the foregoing rules."

Convention on Maritime Neutrality between the United States and Other American Republics, (1928). *United States Treaty Series*, No. 845, 2-3.

4. Article 22. "The following are accepted as established rules of International Law :

"(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject.

“(2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship whether surface vessel or submarines, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship’s papers in a place of safety. For this purpose the ship’s boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board.”

Treaty between the United States and Other Powers for the Limitation and Reduction of Naval Armament (1930). *United States Treaty Series*, No. 830, 27. Also the proces-verbal, 1936). 173 *League of Nations Treaty Series*, 353.

5. Article 54. “(3) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface or submarine, or a military aircraft, may not sink or render incapable of navigation an unarmed merchant vessel without having first placed passengers, crew and ship’s papers in a place of safety. For this purpose the ship’s boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or by the presence of another vessel which is in a position to take them on board.”

Article 61. “(1) If a vessel does not display the distinctive colors and markings required of a certified vessel under Article 44, or fails to produce a certificate of neutrality, and if the belligerent as a result of visit and search has reasonable grounds for belief that the vessel or its cargo is subject to condemnation or preemption, the belligerent may capture the vessel and conduct or send it to one of its ports for prize proceedings. If to conduct or send the captured vessel to port would involve danger to the safety of the captor or to the success of the operations in which he is engaged at the time, the captured vessel may be destroyed subject to compliance with the rules laid down in Article 54. In such

cases prize proceedings shall be held on the basis of the ship's papers and other lawful evidence."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). 33 *A. J. I. L.*, (1939), *Supp.*, 186, 187.

6. " * * * States evince greater readiness to destroy neutral vessels guilty of unneutral service than those guilty only of carrying contraband."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). Comment. 33 *A. J. I. L.*, (1939), *Supp.*, 564.

7. Article 73. "(1) Captured neutral vessels may be destroyed if:

"1. They were captured because of proceeding under enemy convoy, forcible resistance, or aid to the enemy and

"2. It appears to be inexpedient or unsafe to bring them to port.

(2) By way of exception neutral vessels which were captured for reasons other than those named in par. 1 No. 1 may likewise be destroyed if:

"1. Their condemnation would be expected as a certainty and

"2. To bring them to port would expose the vessel which captured them to danger or might prejudice the success of the enterprises on which it is engaged."

Article 74. "(1) The destruction of vessels in accordance with Articles 72 and 73 is admissible only if the passengers, crew, and papers of the vessel have been brought to a place of safety before destruction.

(2) Ship's boats are not to be regarded as a place of safety unless the safety of passenger and crew under the existing conditions of the seas and the weather is assured by the proximity of land or the presence of another vessel which is able to take them on board."

German Prize Law Code (1939). *Hackworth, G. H.*, *Digest of International Law*, (Washington, 1943), 257, 248.

8. "The sinking of this American ship by a German submarine flagrantly violated the right of United States vessels freely to navigate the seas subject only to a belligerent

right accepted under international law. This belligerent right, as is known to the German Government, does not include the right deliberately to sink a merchant vessel, leaving the passengers and crew to the mercies of the elements. On the contrary the belligerent is required to place the passengers and crew in places of safety."

Sinking of the S. S. "*Robin Moor*."

Dept. of State Bulletin, Vol. IV, No. 104, June 21, 1941. United States Naval War College, *International Law Documents*, 1940, 237.

9. "A few months ago an American-flag merchant ship, the *Robin Moor*, was sunk by a Nazi submarine in the middle of the South Atlantic, under circumstances violating long-established international law and very principle of humanity. The passengers and the crew were forced into open boats hundreds and miles from land, in direct violation of international agreements signed by the Government of Germany. No apology, no allegation of mistake, no offer or reparations has come from the Nazi Government."

Freedom of the Seas, address by the President, Sept. 11, 1941. *Dept. of State Bulletin*, Vol. V, No. 116, Sept. 13, 1941. United States Naval War College, *International Law Documents*, 1941, 15.

10. "The particularly revolting and horrifying circumstances of the machine-gunning by an Axis submarine crew of the survivors of the torpedoed Colombian schooner *Resolute* has produced the deepest feeling of indignation in the American people. These murderous tactics of Nazi pirate crews only serve to redouble the resolve of decent men to exterminate the pernicious evil of vicious Nazism."

Statement by Cordell Hull, Secretary of State, June 27, 1942. *The Department of State Bulletin*, June 27, 1942, Vol. VI, No. 157, Publication 1761, 562.

III. War Zones

The declaration of war zones, waters which neutral ships could enter only at their own risk, was practiced by the belligerents in the World War and was excused at first as a matter of retaliation and finally as a matter of self-preservation.

1. Article 3. "When anchored contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

"The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to ship owners, which must also be communicated to the Governments through the diplomatic channel."

Article 4. "Neutral Powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents.

"The neutral Power must inform ship-owners, by a notice issued in advance, where automatic contact mines have been laid. This notice must be communicated at once to the Governments through the diplomatic channel."

VIII Hague Convention, (1907). Malloy, *Treaties, Conventions*, II, 2310.

2. "(e) When mines are employed, every possible precaution must be taken for the security of peaceful shipping.

"The belligerents undertake to provide as far as possible that these mines shall become harmless within a limited time, and should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit by a notice to mariners, which must also be communicated to the Governments through the diplomatic channel."

United States Naval War College, *International Law Topics and Discussions*, 1913, 147.

3. "During the last week the Germans have scattered mines indiscriminately in the open sea on main trade route from America to Liverpool via north of Ireland.

"These mines can not have been laid by any German ship of war. They have been laid by some merchant vessels flying neutral flag which have come along the trade route as if for purposes of peaceful commerce and while profiting to the full by immunity enjoyed by neutral merchant ships have wantonly and recklessly endangered the lives of all who travel on the sea regardless of whether they are friend or foe, civilian or military in character.

"In these circumstances, having regard to the great interests entrusted to the British Navy, to the safety of peaceful commerce on high seas, and to the maintenance within limits of international law of trade between neutral countries, the Admiralty feels it necessary to adopt exceptional measures appropriate to the novel conditions under which this war is being waged.

"They therefore give notice that the whole of the North Sea must be considered a military area. Within this area merchant shipping of all kinds, traders of all countries, fishing craft, and all other vessels will be exposed to the gravest dangers from mines which it has been necessary to lay and from warships searching vigilantly by night and day for suspicious craft."

British Foreign Office to British Ambassador in Washington, presented to the Secretary of State, Nov. 3, 1914. *United States Foreign Relations, 1914, Supp.*, 464.

4. "The German Government has in vain called the attention of neutral powers to the fact, that it must face the question of whether it can longer persevere in its hitherto strict observance of the rules of the London declaration, if Great Britain were to continue its course, and the neutral powers were to continue to acquiesce in these violations of neutrality to the detriment of Germany; for her violations of international law Great Britain pleads the vital interests which the British Empire has at stake, and the neutral powers seem to satisfy themselves with theoretical

protest. Therefore in fact they accept the vital interests of belligerents as sufficient excuse for every method of warfare. Germany must now appeal to these same vital interests to its regret. It therefore sees itself forced to military measures aimed at England in retaliation against the English procedure. Just as England has designated the area between Scotland and Norway as an area of war, so Germany now declares all the waters surrounding Great Britain and Ireland including the entire English Channel as an area of war, and thus will proceed against the shipping of the enemy."

"For this purpose beginning February 18, 1915, it will endeavor to destroy every enemy merchant ship that is found in this area of war without its always being possible to avert the peril, that thus threatens persons and cargoes. Neutrals are therefore warned against further entrusting crews, passengers and wares to such ships. Their attention also called to the fact, that it is advisable for their ships to avoid entering this area, for even though the German naval forces have instructions to avoid violence to neutral ships insofar as they are recognizable, in view of the misuse of neutral flags ordered by the British Government and the contingencies of naval warfare their becoming victims of torpedoes directed against enemy ships cannot always be avoided; * * *

Imperial Councillor's proclamation, as given by the German Ambassador to the Secretary of State, Feb. 4, 1915. *United States Foreign Relations, 1915, Supp.*, 96.

5. "It is of course not necessary to remind the German Government that the sole right of a belligerent in dealing with neutral vessels on the high seas is limited to visit and search, unless a blockade is proclaimed and effectively maintained, which this Government does not understand to be proposed in this case. To declare or exercise a right to attack and destroy any vessel entering a prescribed area of the high seas without first certainly determining its belligerent nationality and the contraband character of its cargo would be an act so unprecedented in naval warfare

that this Government is reluctant to believe that the Imperial Government of Germany in this case contemplates it as possible."

Secretary of State to Ambassador in Germany, Feb. 10, 1905. *United States Foreign Relations*, 1915, *Supp.*, 98-99.

6. "You may inform the Minister for Foreign Affairs that this Government does not see its way at the present time to joining other governments in protesting to the British Government against their announcement that ships entering the North Sea after November 5 do so at their own peril."

Secretary of State to Minister in Norway, Nov. 10, 1914. *United States Foreign Relations*, 1914, *Supp.*, 466.

7. "In the meanwhile, the British Government has already admitted its directions regarding the misuse of neutral flags. Their execution warrants the assumption that English merchant ships will resort to every means of rendering themselves unrecognizable as such. Thereby, in turn, the recognition of neutral merchant vessels is made practically impossible, unless they sail by day under convoy, since even the painting of the hull in national colors and similar methods of identification contemplated by neutrals can be straightway copied by English merchant ships. Visit and search are put out of the question by reason of the attacks to be expected from disguised English merchant ships, since the same would expose the boarding party and the submarine itself to destruction. In such a state of affairs there can be further assurance for the safety of neutral shipping in the English naval war zone. In addition, account must be taken of an increased danger from mines, since it is intended to make the most extensive use of mines in all parts of the war area. Neutral vessels must therefore again be *most earnestly* warned against venturing into this area; they may, on the other hand, when the case arises, unhesitatingly choose the route north of Scotland recommended by the German Admiralty.

"The new German method of naval warfare is imposed and justified by the murderous character of the English method of naval warfare, which seeks to condemn the German peo-

ple to death by starvation through the destruction of legitimate trade with neutral foreign countries.

"Germany will therefore adhere to the announced method of warfare until England decides for her part to observe also the recognized rules of naval warfare as laid down in the Declaration of Paris and the Declaration of London, or until she is compelled to do so by the neutral powers."

German Ambassador to Secretary of State, Feb. 15, 1915. *United States Foreign Relations*, 1915, *Supp.*, 104-105.

8. "Germany has, so far, not made unrestricted use of the weapon which she possesses in her submarines. Since the Entente powers, however, have made it impossible to come to an understanding based upon equality of rights of all nations, as proposed by the Central powers, and have instead declared only such a peace to be possible which shall be dictated by the Entente allies and shall result in the destruction and humiliation of the Central powers, Germany is unable further to forego the full use of her submarines."

"Under these circumstances Germany will meet the illegal measures of her enemies by forcibly preventing after February 1, 1917, in a zone around Great Britain, France, Italy, and in the eastern Mediterranean all navigation, that of neutrals included, from and to England and from and to France, etc., etc. All ships met within that zone will be sunk."

Memorandum, enclosed in message from the German Ambassador to the Secretary of State, Jan. 31, 1917.

United States Foreign Relations, 1917, 1, 100.

9. "The Imperial German Government today gave notice of an extension of the submarine blockade according to which it will henceforth and without further notice oppose by every means in its power any navigation whatsoever of the waters of the Arctic Ocean lying east (of the 24th degree of longitude east) and south of the 75th degree of latitude north, with the exception of the Norwegian territorial waters. Neutral vessels navigating that zone would do so at their risk and peril."

Swiss Minister (Department of German Interests) to the Secretary of State, received Mar. 23, 1917. *United States Foreign Relations*, 1917, *Supp.* 1, 184, 187.

10. The Germans extended their zone further—to the Cape Verde Islands, Dakar, and the Azores.

Swiss Minister to Secretary of State, Mar. 4, 1918.

11. "In view of the unrestricted warfare carried on by Germany at sea by means of mines and submarines not only against the Allied powers but also against neutral shipping * * *. His Majesty's Government gave notice that on and after the 7th proximo the undermentioned area in the North Sea will be rendered dangerous to all shipping by operations against the enemy and it should therefore be avoided."

British Foreign Office, forwarded by the Ambassador in Great Britain to Secretary of State, Jan. 24, 1917.

United States Foreign Relation, 1917, *Supp.* 1, 518.

Also, *United States Foreign Relations*, 1918, *Supp.* 1, Vol. II, 1761, 1765. Zone is called a "mined area".

12. "As the question of appropriating certain portions of the high seas for military operations, to the exclusion of the use of the hostile area as a common highway of commerce, has not become a settled principle of international law assented to by the family of nations, it will be recognized that the Government of the United States must, and hereby does, for the protection of American interests, reserve generally all of its rights in the premises, including the right not only to question the validity of these measures, but to present demands and claims in relation to any American interests which may be unlawfully affected, directly or indirectly, by virtue of the enforcement of these measures."

Secretary of State to British Ambassador, Feb. 19, 1917. *United States Foreign Relations*, 1917, *Supp.* 1, 519-520.

13. "The Government of the United States is also advised that the Norwegian Government has been informed that the Governments of the United States and Great Britain are engaged in laying a barrage across that portion of the North Sea lying between Scotland and Norway, which when completed will effectively prevent the passage of enemy submarines to and from the Atlantic Ocean by the northern route through the North Sea provided that they are not

permitted illegal passage through the territorial waters of Norway."

Secretary of State to the Chargé in Norway, Aug. 27, 1915. *United States Foreign Relations*, 1918, *Supp.* 1, Vol. II, 1764-5.

14. "The United States could hardly have justified this action on the basis of retaliation, since it had taken the position that inter-belligerent retaliation cannot affect neutral rights on the high seas."

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). *Comment.* 33 *A. J. I. L.*, (1939), *Supp.* 705.

15. "The German Minister in Christiania has informed the Foreign Office that owing to previous British declarations that the North Sea is a war zone and the German Bay (Heligoland Bight) a danger zone, the Imperial German Government is obliged, in order to meet the situation created by the said declarations, to proceed to the extraordinary measure of warning neutral ships against navigating in the German Bay and against further dangers to which it becomes necessary to expose neutral ships in consequence of British warfare in this zone. The danger of navigating in this zone can only be avoided by following special directions which can be obtained from the German naval authorities."

Minister in Norway to Secretary of State, Mar. 12, 1918. *United States Foreign Relations*, 1918, *Supp.* 1, Vol. II, 1763.

16. "Admiralty Notice No. 1462 announces following amended limits of dangerous area Orkney Isles."

Consul General at London to Secretary of State, Dec. 14, 1918. *United States Foreign Relations*, 1918, *Supp.* 1, Vol. II, 1765.

Established as a belligerent *practice* during the World War, the declaration of war zones has not been definitely recognized as a belligerent *right* by documents and authoritative texts since the war. Post-war papers on this topic are few. In modern practice, however, zones have again been pro-

claimed by belligerents. Some neutrals, including the United States, recognized these danger zones by proclaiming *combat areas*.

1. Article 7. "In case a belligerent commanding officer considers that the success of the operation in which he is engaged may be prejudiced by the presence of vessels or aircraft equipped with radio installations in the immediate vicinity of his armed forces or by the use of such installations therein, he may order neutral vessels or neutral aircraft on or over the high seas:

1. To alter their course to such an extent as will be necessary to prevent their approaching the armed forces operating under his command; or

2. Not to make use of their radio transmitting apparatus while in the immediate vicinity of such forces.

A neutral vessel or neutral aircraft, which does not conform to such direction of which it has had notice, exposes itself to the risk of being fired upon. It will also be liable to capture, and may be condemned if the Prize Court considers that the circumstances justify condemnation."

Article 30. "In case a belligerent commanding officer considers that the presence of aircraft is likely to prejudice the success of the operations in which he is engaged at the moment, he may prohibit the passing of neutral aircraft in the immediate vicinity of his forces or may oblige them to follow a particular route. A neutral aircraft which does not conform to such directions, of which he has had notice issued by the belligerent commanding officer, may be fired upon."

General Report of the Commission of Jurists at the Hague, (1923). 17 *A. J. I. L.* (1923), *Supp.*, 242-3, 253.

2. Article 70. "A belligerent may not establish on the high seas outside of a blockade zone a barred zone or other area however described in which it seeks to impose special prohibition, restriction or regulation upon the passage of neutral vessels. However, a belligerent may require neutral vessels in the immediate vicinity of its armed forces not to

make use of their radio transmitting apparatus except for SOS calls while in the Immediate vicinity of such forces.”

Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, (Harvard Law School). 33 *A.J.I.L.*, (1939), *Supp.*, 190.

3. “In September 1939 the British Government gave notice that mines had been laid in specified areas in the vicinity of the British coast and in areas in the China and Mediterranean Seas, as well as in a specified region off the German coast.”

Hackworth, G. H., *Digest of International Law*, (Washington, 1943), Vol. VI, 509.

4. “The use of mines will, as hitherto, continue to be kept strictly within the framework of the VIIIth Hague Convention of 1907. In accordance with this Convention the mine fields which have been laid have not only been notified to the neutral governments but also repeatedly announced by radio and the Nautical Warning Service and published in the ‘Notice to Mariners’.” (The Charge d’Affaires ad interim to Germany to the Secretary of State, Sept. 20, 1939.

Hackworth, G. H., *Digest of International Law*, (Washington, 1943), Vol. VI, 510.

5. “Germany has been guilty of laying automatic moored mines without notice in the North Sea outside territorial waters off the British Coast. Consequently the Admiralty gave notice that it is their intention to lay mines for the better protection of vessels navigating in the North Sea off the east coast of England and Scotland. Mines will be laid without further notice within the areas defined below.”

Notice from the British Admiralty forwarded by the counselor of Embassy at London to the Secretary of State, Dec. 27, 1939. Hackworth, G. H., *Digest of International Law*, (Washington, 1943), Vol. VI, 510.

6. “On June 15, 1940 the British Embassy in Washington notified the Department of State that certain areas in the Mediterranean had been rendered dangerous to shipping on account of mines.”

Hackworth, G. H., *Digest of International Law*, (Washington, 1943), Vol. VI, 510.

7. "On July 16, 1940 the British Ambassador informed the Department of State that, in view of the Italian notice that within 30 miles of Allied coasts all merchant vessels bound for Allied ports would navigate at their risk and peril, the British Government gave notice that all vessels navigating within 30 miles of Italian territory in the Mediterranean would do so at their risk and peril."

Hackworth, G. H., *Digest of International Law*, (Washington, 1943), Vol. VI, 510.

8. "Whereas section 3 of the joint resolution of Congress approved November 4, 1939, provides as follows:

"(a) Whenever the President shall have issued a proclamation under the authority of section 1 (a), and he shall thereafter find that the protection of citizens of the United States so requires, he shall, by proclamation, define combat areas, and thereafter it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel to proceed into or through any such combat area. The combat areas so defined may be made to apply to surface vessels or aircraft, or both."

"Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred on me by the said joint resolution, do hereby find that the protection of citizens of the United States requires that there be defined a combat area through or into which it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel, whether a surface vessel or an aircraft, to proceed."

"And I do hereby define such combat area as follows:"

All navigable waters between the north coast of Spain and the coast of Norway.

Proclamation Defining Combat Areas Nov. 4, 1939.

United States Naval War College, *International Law Situations*, 1939, 147-8.

9. On June 11, 1940, President Roosevelt extended the Atlantic combat zone to include all navigable waters adjacent to the shores of Portugal, Spain, and the northwest coast of Africa. The Mediterranean was also declared a

combat zone. A new combat zone was established off the coast of Italian Somaliland.

United States Naval War College *International Law Documents*, 1940, 24-27.

10. "While some countries like the United States and Argentina long ago have declared the waters surrounding the British Isles a war zone and have forbidden their ships, airplanes and citizens to enter these dangerous zones, other countries have not yet taken the same step.

"Germany, having repeatedly warned these States not to send their ships into the waters around the British Isles, has now again requested, in a note, these governments to forbid their ships from entering the Anglo-German war zones. It is in the interest of these States themselves to accede this German request as soon as possible.

"The Reich Government wishes to emphasize the following fact: The naval war in the waters around the British Isles is in full progress.

"The whole area has been mined.

"German planes attack every vessel. Any neutral ship which in the future enters these waters is liable to be destroyed."

German declaration. *New York Times*, Aug. 18, 1940. United States Naval War College, *International Law Documents*, 1940, 49-50.

11. The German government defined the "total blockade" area, including the waters bordering on France and Belgium and the waters surrounding the British Isles.

From the New York Times, August 19, 1941.

United States Naval War College, *International Law Documents*, 1940, 51.

12. "Airplanes belonging to Pan American Airways, Incorporated, and American citizens, members of the crew or passengers, travelling thereon, when proceeding between Lisbon and African ports south of 30 north latitude, may henceforth proceed into and through that portion of the combat area defined by the President in his proclamation numbered 2410, of June 11, 1940, which is bounded as follows:"

Federal Register, Vol. V, 2209. United States Naval War College, *International Law Documents*, 1940, 102.

13. "The Hitler government, in defiance of the laws of the sea, in defiance of the recognized rights of all other nations, has presumed to declare, on paper, that great areas of the seas, even including a vast expanse lying in the Western Hemisphere, are to be closed and that no ships may enter them for any purpose, except at peril of being sunk. Actually they are sinking ships at will and without warning in widely separated areas both within and far outside of these far-flung pretended zones."

Address by the President, Sept. 11, 1941. United States Naval War College, *International Law Documents*, 1941, 17.

14. "Generation after generation, America has battled for the general policy of the freedom of the seas. That policy is a very simple one—but a basic, fundamental one. It means that no nation has the right to make the broad oceans of the world, at great distances from the actual theater of land war, unsafe for the commerce of others."

Address by the President, Sept. 11, 1941. United States Naval War College, *International Law Documents*, 1941, 19.

15. "As a result of the entry into the war of the United States of America and the development which naval warfare has undergone off the American east coast, the zone of operation in which fighting may be expected has been extended to the American coast.

"Every ship which enters this zone after June 26, 1942, will expose itself to destruction.

"The German Government, therefore, warns all ships against navigating in this danger zone, which has been demarcated as follows:

(including most of the Atlantic Ocean)

"Such an extension of the realm of operations on the part of the German Navy is more than an announcement on paper. That has been proved already beyond a shadow of a doubt by the successes achieved by German submarines in American waters."

Berlin radio broadcast recorded by the Columbia Broadcasting Company. *New York Times*, June 14, 1942. United States Naval War College, *International Law Documents*, 1941, 158.

The British Admiralty on February 15, 1944 declared a vast additional area of 150,000 square miles "dangerous" to shipping. This area included practically the entire Bay of Biscay and also blocks the southern end of St. George's Channel, which runs between Ireland and Wales. Any vessel entering this area, except with the permission of the British authorities, does so at her own peril.

IV. Defense Areas

Defense areas unlike war zones are based upon the right of a state to exercise jurisdiction for specific purposes, such as defense, revenue, etc., over waters adjacent to its coast. These areas are, consequently, established in waters near the home shore instead of near the shores of the enemy. Only two nations, the United States and Japan, have employed defense areas. As yet, the right of establishing such defense areas has not been questioned.

1. "Article 1. In case of war or emergency, the minister of the Navy may, limiting an area, designate a defense sea area under this ordinance. The designation, or revocation, of such defense sea area shall be advertised by the minister of the Navy."

"Article 3. In the defense sea area, the ingress and egress and passage of any vessels other than those belonging to the Army or Navy are prohibited from sunrise to sunrise."

"Article 5. All vessels which enter, leave, pass through, or anchor in a defense sea area shall obey the direction of the commander in chief of the naval station, or the commandant of the secondary naval station, concerned."

"Article 6. The commander in chief of a naval station, or the commandant of a secondary naval station, may, when he thinks necessary, forbid or limit within a defense sea area fishing, taking of seaweeds, or any other act considered to interfere with military operations."

"Article 8. Any vessel which has transgressed this ordinance or orders issued under this ordinance, may be ordered to leave the defense area by a route which shall be designated.

"Regarding vessels which do not obey the order mentioned in the preceding paragraph, armed force may be used when necessary."

Japanese Imperial Ordinance Regarding Defense Sea Areas, (1904). United States Naval War College, *International Law Situations*, 1912, 122-123.

2. "*Regulations, Japanese strategical areas, 1904-5.*—The regulations governing movement of vessels within 'strategical areas' varied according to the area which was under the regulation. The notification of the establishment of these areas was made in the Official Gazette. Twelve or more of such areas were established; about bays, as at Tokyo; about islands, as the Pescadores; in the neighborhood of naval stations, as Sasebo; or covering straits, as Tangaru Straits."

United States Naval War College, *International Law Situations*, 1912, 123.

3. "In several areas the boundaries (Japanese, 1904) seem to have run outside the 3-mile limit and even 10 miles from land seems to have been included in some instances."

United States Naval War College, *International Law Situations*, 1912, 126.

4. "Certain areas in the neighborhood of fortifications or other points of military importance are sometimes set apart as strategic areas and vessels are notified or warned not to enter. Such action has been generally approved."

United States Naval War College, *International Law Topics and Discussions*, 1914, 117.

5. Whoever shall "willfully, or wantonly violate any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which defensive sea areas are hereby authorized to be established by order of the President from time to time as may be necessary in his discretion for purposes of national defense, shall be punished, on conviction thereof in a district or circuit in which the offense was committed, or into which the offender is first brought, by a fine of not more than \$5,000, or by imprisonment for a term not exceeding five years, or by both, in the discretion of the court."

39 Stat. 1194. United States Naval War College, *International Law Documents*, 162.

6. On April 5, 1917, President Wilson established 29 defensive sea areas. One other established later.

Executive Order Establishing Defensive Sea Areas,
12 A. J. I. L., (1918), Supp., 13-16, 21.

7. "II. A vessel desiring to cross a Defensive Sea Area shall proceed to the vicinity of the entrance to the proper channel, flying her national colors, together with International Code number and pilot signal, and there await communication with the Harbor Entrance Patrol. It is expressly prohibited for any vessel to enter the limits of a Defensive Sea Area otherwise than at a designated entrance and after authorization by the Harbor Entrance Patrol."

"IV. On receiving permission from the Harbor Entrance Patrol to enter a Defensive Sea Area, a vessel must comply with all instructions as to pilotage and other matters that she may receive from proper authority, either before or during her passage across the Area; it is understood that only upon condition of such compliance is the said permission granted."

"V. No permission will be granted to other than a public vessel of the United States to cross a Defensive Sea Area between sunset and sunrise, nor during the prevalence of weather conditions that render navigation difficult or dangerous. A vessel arriving off a Defensive Sea Area after sunset shall anchor or lie-to at a distance of at least a mile outside its limits until the following sunrise; vessels discovered near the limits of the Areas at night may be fired upon."

"IX. Any master of a vessel or other person within the vicinity of a Defensive Sea Area who shall violate these Regulations, or shall fail to obey an order to stop or heave to, or shall perform any act threatening the efficiency of mine or other defenses or the safety of navigation, or shall take any action inimical to the interests of the United States in its prosecution of war, may be detained therein by force of arms and renders himself liable to prosecution as provided for in the Act * * *."

Regulations for Carrying into Effect the Executive Order of the President Establishing Defensive Sea Areas. April 5, 1917. 12 A. J. I. L., (1918), Supp., 16-18.

8. On December 11, 1941, President Roosevelt established 8 defensive sea areas.

Executive Order, Dec. 11, 1941. United States Naval War College, *International Law Documents*, 1941, 83-88.

9. "A vessel not proceeding under United States naval or other United States authorized supervision shall not enter or navigate the waters of any of the defensive sea areas established hereby except during daylight, when good visibility conditions prevail, and then only after specific permission has been obtained. Advance arrangements for entry into or navigation through or within any of the said defensive sea areas must be made, preferably by application at the appropriate United States Naval District Headquarters, in advance of sailing, or by radio or visual communication on approaching the seaward limits of the area."

"A vessel entering or navigating the waters of any of the said defensive sea areas does so at its own risk."

"A vessel may expect supervision of its movements within any of the said defensive sea areas, either through surface craft or aircraft. Such controlling surface craft and aircraft shall be identified by a prominent display of the union jack."

"Any master of a vessel or other person within any of the said defensive sea areas, who shall disregard these regulations, or shall fail to obey an order of United States naval authority to stop or heave to, or shall perform any act threatening the efficiency of mine or other defenses or the safety of navigation, or shall take any action inimical to the interests of the United States, may be detained therein by force of arms and renders himself liable to attack by the armed forces of the United States, and liable to prosecution as provided in Section 44 of the Criminal Code * * *."

Executive Order, Dec. 11, 1941. United States Naval War College, *International Law Documents*, 89-90.

10. By the end of 1943 well over 40 defensive sea areas had been established by President Roosevelt.

The greatest extension beyond the three-mile limit for defensive purposes was in the Southeastern Alaska Maritime Control Area where the area extended about 53 miles beyond the three-mile limit.

United States Naval War College, *Defensive Sea Area Charts*, Feb. 22, 1944, 1.

V. Agreement With China Regarding Jurisdiction Over Criminal Offenses by Armed Forces

(The Department of State Bulletin, Vol. IX, No. 217, Aug. 21, 1943)

The Secretary of State has received from the American Embassy at Chungking copies of the notes, in English and Chinese, which were exchanged on May 21, 1943 between Mr. George Atcheson, Jr., American Chargé d'Affaires ad interim, and Dr. Kuo-Cheng Wu, Political Vice Minister in Charge of Ministerial Affairs, Chinese Ministry of Foreign Affairs, effecting an agreement between the United States and China regarding the jurisdiction over criminal offenses which may be committed by the armed forces of either country in territory of the other country. The Government of the United States previously had entered into arrangements of a similar character with a number of other countries.

According to information received in the Department of State from the American Embassy at Chungking the following statement was made by the Chinese Ministry of Foreign Affairs in connection with the publication in China of the notes of May 21, 1943:

"According to international law and international practice, when the armed forces of the Allied nations are stationed in the territory of another for the purpose of undertaking joint military operations, exclusive criminal jurisdiction over members of such forces is exercised by the military or naval courts or authorities of the country to which such forces belong. This practice was followed in the last world war. Last year, when the United States despatched

armed forces to territories under British jurisdiction, the United States and the British Governments reached an agreement whereby the armed forces of the United States stationed in British territory are formally placed under the exclusive jurisdiction of the United States military or naval courts or authorities in respect of criminal offenses.

"Inasmuch as all nationals of the United States in China, including those belonging to its armed forces, enjoyed extraterritorial rights, there was no need for any special regulations. However, as the exchange of ratifications of the new Sino-American treaty has already taken place, United States nationals in China are henceforth subject to our jurisdiction. Therefore, the necessity has been felt that the question of criminal jurisdiction over members of the armed forces of the United States in China should be clearly defined.

"Accordingly, the Political Vice Minister in charge of Ministerial Affairs of the Ministry of Foreign Affairs, Dr. K. C. Wu, on behalf of the Chinese Government, and the *Chargé d'Affaires ad interim*, of the United States, Mr. George Atcheson, on behalf of the United States Government, have reached an understanding, on the basis of equality and reciprocity which has been placed on record by an exchange of notes on May 21, 1943, to the effect that jurisdiction over criminal offenses committed by members of the armed forces of the United States in China shall be exclusively exercised by the service courts and the military and naval authorities of the United States, and that the United States Government shall make like arrangements to ensure to such Chinese forces as may be stationed in territory under United States jurisdiction a position corresponding to that of the United States forces in China."

The texts in English of the notes exchanged on May 21, 1943, are as follows:

*The American Chargé at Chungking to the Chinese
Political Vice Minister in Charge of Ministerial
Affairs, Ministry of Foreign Affairs*

CHUNGKING, May 21, 1943.

EXCELLENCY:

Confirming the understanding reached in the conversations which have taken place in Chungking between representatives of our two Governments, I have the honor to inform Your Excellency that it is the desire of the Government of the United States that the service courts and authorities of its military and naval forces shall during the continuance of the present conflict against our common enemies exercise exclusive jurisdiction over criminal offenses which may be committed in China by members of such forces.

If cases arise in which for special reasons the service authorities of the Government of the United States may prefer not to exercise the above jurisdiction, it is proposed that in any such case a written statement to that effect shall be sent to the Chinese Government through diplomatic channels, in which event it would be open to the Chinese authorities to assume jurisdiction.

Assurance is given that the service courts and authorities of the United States forces in China will be willing and able to try, and on conviction to punish, all criminal offenses which members of the United States forces may be alleged on sufficient evidence to have committed in China and that the United States authorities will be willing in principle to investigate and deal appropriately with any alleged criminal offenses committed by such forces in China which may be brought to

their attention by the competent Chinese authorities or which the United States authorities may find have taken place.

Insofar as may be compatible with military security, the service authorities of the United States will conduct the trial of any member of the United States forces for an offense against a member of the civilian population promptly in open court in China and within a reasonable distance from the place where the offense is alleged to have been committed so that witnesses may not be required to travel great distances to attend the trial.

The competent United States authorities will be prepared to cooperate with the authorities of China in setting up a satisfactory procedure for affording such mutual assistance as may be required in making investigations and collecting evidence with respect to offenses alleged to have been committed by members of the armed forces of the United States. As a general rule it would probably be desirable that preliminary action should be taken by the Chinese authorities on behalf of the United States authorities where the witnesses or other persons from whom it is desired to obtain testimony are not members of the United States forces. In prosecutions in Chinese courts of persons who are not members of the United States forces, but where members of such forces are in any way concerned, the service authorities of the United States will be glad to render such assistance as is possible in obtaining testimony of members of such forces or in making appropriate investigations.

Inasmuch as the interests of our common cause will best be served by provision that the foregoing arrangement may be placed on a reciprocal basis, the Government of the United States will be ready to make like arrangements to ensure to such Chinese forces as may be stationed in territory under United States jurisdiction a position corresponding to that of the United States forces in China.

It is proposed that the foregoing arrangement shall be in effect during the present war and for a period of six months thereafter.

If the above arrangement is acceptable to the Chinese Government, this note and the reply thereto accepting the provisions outlined shall be regarded as placing on record the understanding between our two Governments.

I avail [etc.]

GEORGE ATCHESON, Jr.

VI. Recognition of the French Committee of National Liberation

Statement by the President

(The Department of State Bulletin, Vol. IX, No. 218, Aug. 28, 1943)

The Government of the United States desires again to make clear its purpose of cooperating with all patriotic Frenchmen, looking to the liberation of the French people and French territories from the oppressions of the enemy.

The Government of the United States, accordingly, welcomes the establishment of the French Committee of National Liberation. It is our expectation that the Committee will function on the principle of collective responsibility of all its members for the active prosecution of the war.

In view of the paramount importance of the common war effort, the relationship with the French Committee of National Liberation must continue to be subject to the military requirements of the Allied commanders.

The Government of the United States takes note, with sympathy, of the desire of the Committee to be regarded as the body qualified to insure the administration and defense of French interests. The extent to which it may be possible to give effect to this desire must, however, be reserved for consideration in each case as it arises.

On these understandings the Government of the United States recognizes the French Committee of National Liberation as administering

those French overseas territories which acknowledge its authority.

This statement does not constitute recognition of a government of France or of the French Empire by the Government of the United States.

It does constitute recognition of the French Committee of National Liberation as functioning within specific limitations during the war. Later on the people of France, in a free and untrammelled manner, will proceed in due course to select their own government and their own officials to administer it.

The Government of the United States welcomes the Committee's expressed determination to continue the common struggle in close cooperation with all the Allies until French soil is freed from its invaders and until victory is complete over all enemy powers.

May the restoration of France come with the utmost speed.

VII. Agreement for United Nations Relief and Rehabilitation Administration

Draft of Sept. 20, 1943

(The New York Times, September 24, 1943)

The governments or authorities whose duly authorized representatives have subscribed hereto,

Being United Nations or being associated with the United Nations in this war,

Being determined that immediately upon the liberation of any area by the armed forces of the United Nations or as a consequence of retreat of the enemy the population thereof shall receive aid and relief from their sufferings, food, clothing and shelter, aid in the prevention of pestilence and in the recovery of the health of the people, and that preparation and arrangements shall be made for the return of prisoners and exiles to their homes and for assistance in the resumption of urgently needed agricultural and industrial production and the restoration of essential services,

Have agreed as follows:

ARTICLE I

There is hereby established the United Nations Relief and Rehabilitation Administration.

1. The Administration shall have power to acquire, hold and convey property, to enter into contracts and undertake obligations, to designate or create agencies and to review the activities of agencies so created, to manage undertakings and

in general to perform any legal act appropriate to its objects and purposes.

2. Subject to the provision of Article VII, the purposes and functions of the Administration shall be as follows:

(a) To plan, coordinate, administer or arrange for the administration of measures for the relief of victims of war in any area under the control of any of the United Nations through the provision of food, fuel, clothing, shelter and other basic necessities, medical and other essential services; and to facilitate in such areas, so far as necessary to the adequate provision of relief, the production and transportation of these articles and the furnishing of these services. The form of activities of the Administration within the territory of a member government wherein that government exercises administrative authority and the responsibility to be assumed by the member government for carrying out measures planned by the Administration therein shall be determined after consultation with and with the consent of the member government.

(b) To formulate and recommend measures for individual or joint action by any or all of the member governments for the coordination of purchasing, the use of ships and other procurement activities in the period following the cessation of hostilities, with a view to integrating the plans and activities of the Administration with the total movement of supplies, and for the purpose of achieving an equitable distribution of available supplies. The Administration may administer such coordination measures as may be authorized by the member governments concerned.

(c) To study, formulate and recommend for individual or joint action by any or all of the member governments measures with respect to such related matters, arising out of its experience in planning and performing the work of relief and rehabilitation, as may be proposed by any of the member governments. Such proposals shall be studied and recommendations formulated if the proposals are supported by a vote of the Council, and the recommendations shall be referred to any or all of the member governments for individual or joint action if approved by unanimous vote of the Central Committee and by vote of the Council.

ARTICLE II

Membership

The members of the United Nations Relief and Rehabilitation Administration shall be the governments or authorities signatory hereto and such other governments or authorities as may upon application for membership be admitted thereto by action of the Council. The Council may, if it desires, authorize the Central Committee to accept new members between sessions of the Council.

Wherever the term "member government" is used in this Agreement it shall be construed to mean a member of the Administration, whether a government or an authority.

ARTICLE III

The Council

1. Each member government shall name one representative, and such alternates as may be necessary, upon the Council of the United Nations

Relief and Rehabilitation Administration, which shall be the policy-making body of the Administration. The Council shall, for each of its sessions, select one of its members to preside at the session. The Council shall determine its own rules of procedure. Unless otherwise provided by the Agreement or by action of the Council, the Council shall vote by simple majority.

2. The Council shall be convened in regular session not less than twice a year by the central committee. It may be convened in special session whenever the Central Committee shall deem necessary, and shall be convened within thirty days after request therefor by one-third of the members of the Council.

3. The Central Committee of the Council shall consist of the representatives of China, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, with the Director General presiding, without vote. Between sessions of the Council it shall, when necessary, make policy decisions of an emergency nature. All such decisions shall be recorded in the minutes of the Central Committee which shall be communicated promptly to each member government. Such decisions shall be open to reconsideration by the Council at any regular session or at any special session called in accordance with Article III, paragraph 2. The Central Committee shall invite the participation of the representatives of any member government at those of its meetings at which action of special interest to such government is discussed. It shall invite the participation of the representative serving as Chair-

man of the Committee on Supplies of the Council at those of its meetings at which policies affecting the provision of supplies are discussed.

4. The Committee on Supplies of the Council shall consist of the members of the Council, or their alternates, representing those member governments likely to be principal suppliers of materials for relief and rehabilitation. The members shall be appointed by the Council, and the Council may authorize the Central Committee to make emergency appointments between sessions of the Council, such appointments to continue until the next session of the Council. The Committee on Supplies shall consider, formulate and recommend to the Council and the Central Committee policies designed to assure the provision of required supplies. The Central Committee shall from time to time meet with the Committee on Supplies to review policy matters affecting supplies.

5. The Committee of the Council for Europe shall consist of all the members of the Council, or their alternates, representing member governments of territories within the European area, and such other members of the Council, representing other governments directly concerned with the problems of relief and rehabilitation in the European area, as shall be appointed by the Council; the Council may authorize the Central Committee to make these appointments in cases of emergency between sessions of the Council, such appointments to continue until the next session of the Council. The Committee of the Council for the Far East shall consist of all the members of the Council, or their alternates, representing member

governments of territories within the Far Eastern area, and such other members of the Council representing other governments directly concerned with the problems of relief and rehabilitation in the Far Eastern area as shall be appointed by the Council; the Council may authorize the Central Committee to make these appointments in cases of emergency between sessions of the Council, such appointments to continue until the next session of the Council. The regional committees shall normally meet within their respective areas. They shall consider and recommend to the Council and the Central Committee policies with respect to relief and rehabilitation within their respective areas. The Committee of the Council for Europe shall replace the Inter-Allied Committee on European Post-War Relief established in London on Sept. 24, 1941, and the records of the latter shall be made available to the Committee for Europe.

6. The Council shall establish such other standing regional committees as it shall consider desirable, the functions of such committees and the method of appointing their members being identical to that provided in paragraph 5 of this article with respect to the Committees of the Council for Europe and for the Far East. The Council shall also establish such other standing committees as it considers desirable to advise it, and, in intervals between sessions of the Council, to advise the Central Committee. For such technical standing committees as may be established, in respect of particular problems such as nutrition, health, agriculture, transport, repatriation and finance, the members may be members of the Council or alternates nominated by them because of special com-

petence in their respective fields of work. The members shall be appointed by the Council, and the Council may authorize the Central Committee to make emergency appointments between sessions of the Council, such appointments to continue until the next session of the Council. Should a regional committee so desire, subcommittees of the technical standing committees shall be established by the technical committees in consultation with the regional committees, to advise the regional committees.

7. The travel and other expenses of members of the Council and of members of its committees shall be borne by the Governments which they represent.

8. All reports and recommendations of committees of the Council shall be transmitted to the Director General for distribution to the Council and the Central Committee by the secretariat of the Council established under the provisions of Article IV, Paragraph 4.

ARTICLE IV

The Director General

1. The executive authority of the United Nations Relief and Rehabilitation Administration shall be in the Director General, who shall be appointed by the Council on the nomination by unanimous vote of the Central Committee. The Director General may be removed by the Council on recommendation, by unanimous vote, of the Central Committee.

2. The Director General shall have full power and authority for carrying out relief operations contemplated by Article I, paragraph 2 (a),

within the limits of available resources and the broad policies determined by the Council or its central committee. Immediately upon taking office he shall in conjunction with the military and other appropriate authorities of the United Nations prepare plans for the emergency relief of the civilian population in any area occupied by the armed forces of any of the United Nations, arrange for the procurement and assembly of the necessary supplies and create or select the emergency organization required for this purpose. In arranging for the procurement, transportation and distribution of supplies and services, he and his representatives shall consult and collaborate with the appropriate authorities of the United Nations and shall, wherever practicable, use the facilities made available by such authorities. Foreign voluntary relief agencies may not engage in activity in any area receiving relief from the Administration without the consent and unless subject to the regulation of the Director General. The powers and duties of the Director General are subject to the limitations of Article VII.

3. The Director General shall also be responsible for the organization and direction of the functions contemplated by Article I, paragraphs 2 (b) and 2 (c).

4. The Director General shall appoint such Deputy Directors General, officers, expert personnel, and staff at his headquarters and elsewhere, including field missions, as he shall find necessary, and he may delegate to them such of his powers as he may deem appropriate. The Director General, or upon his authorization the Deputy Directors General, shall supply such secretariat and

other staff and facilities as shall be required by the Council and its committees, including the regional committees and subcommittees. Such Deputy Directors General as shall be assigned special functions within a region shall attend meetings of the regional standing committee whenever possible and shall keep it advised on the progress of the relief and rehabilitation program within the region.

5. The Director General shall make periodic reports to the Central Committee and to the Council covering the progress of the Administration's activities. The reports shall be made public except for such portions as the Central Committee may consider it necessary, in the interest of the United Nations, to keep confidential; if a report affects the interests of a member government in such a way as to render it questionable whether it should be published, such government shall have an opportunity of expressing its views on the question of publication. The Director General shall also arrange to have prepared periodic reports covering the activities of the Administration within each region, and he shall transmit such reports with his comments thereon to the Council, the Central Committee and the respective regional committees.

ARTICLE V

Supplies and Resources

1. Insofar as its appropriate constitutional bodies shall authorize, each member government will contribute to the support of the Administration in order to accomplish the purpose of Article I, Paragraph 2 (a). The amount and char-

acter of the contributions of each member government under this provision will be determined from time to time by its appropriate constitutional bodies. All such contributions received by the Administration shall be accounted for.

2. The supplies and resources made available by the member governments shall be kept in review in relation to prospective requirements by the Director General, who shall initiate action with the member governments with a view to assuring such additional supplies and resources as may be required.

3. All purchases by any of the member governments, to be made outside their own territories during the war for relief or rehabilitation purposes, shall be made only after consultation with the Director General, and shall, so far as practicable, be carried out through the appropriate United Nations agency.

ARTICLE VI

Administrative Expenses

The Director General shall submit to the Council an annual budget, and from time to time such supplementary budgets as may be required, covering the necessary administrative expenses of the Administration. Upon approval of a budget by the Council the total amount approved shall be allocated to the member Governments in proportions to be determined by the Council. Each member Government undertakes, subject to the requirements of its constitutional procedure, to contribute to the Administration promptly its share of the administrative expenses so determined.

ARTICLE VII

Notwithstanding any other provision herein contained, while hostilities or other military necessities exist in any area, the Administration and its Director General shall not undertake activities therein without the consent of the military command of that area, and unless subject to such control as the command may find necessary. The determination that such hostilities or military necessities exist in any area shall be made by its military commander.

ARTICLE VIII

Amendment

The provisions of this agreement may be amended as follows:

a. Amendments involving new obligations for member Governments shall require the approval of the Council by a two-thirds vote and shall take effect for each member Government on acceptance by it;

b. Amendments involving modification of Article III or Article IV shall take effect on adoption by the Council by a two-thirds vote, including the votes of all the members of the Central Committee;

c. Other amendments shall take effect on adoption by the Council by a two-thirds vote.

ARTICLE IX

Entry Into Force

This agreement shall enter into force with respect to each signatory on the date when the

agreement is signed by that signatory, unless otherwise specified by such signatory.

ARTICLE X

Withdrawal

Any member Government may give notice of withdrawal from the Administration at any time after the expiration of six months from the entry into force of the agreement for that Government. Such notice shall take effect twelve months after the date of its communication to the Director General, subject to the member Government having met by that time all financial, supply or other material obligations accepted or undertaken by it.

VIII. Churchill Statement on the Azores

(The New York Times, October 13, 1943)

The text of Prime Minister Churchill's statement in the House of Commons follows:

I have an announcement to make to the House arising out of the treaty signed between this country and Portugal in the year 1373 between His Majesty King Edward III and King Ferdinand and Queen Eleanor of Portugal. This treaty was reinforced in various forms by treaties of 1386, 1642, 1654, 1660, 1661, 1703, 1815 and in a secret declaration of 1899.

In more modern times the validity of old treaties was recognized in treaties of arbitration concluded with Portugal in 1904 and in 1914. Article 1 of the Treaty of 1373 runs as follows:

“In the first place we settle and covenant that they shall be from this day forward * * * true and faithful friends; they shall henceforth reciprocally be friends to friends and enemies to enemies and shall assist, maintain, and uphold each other mutually by sea and by land against all men that may live or die.”

This engagement has lasted now for over 600 years and that is without parallel in world history. I have now to announce the latest application of these instruments. At the outset of the war the Portuguese Government in full agreement with His Majesty's Government in the United Kingdom adopted a policy of neutrality

with the view to preventing the war from spreading into the Iberian Peninsula.

The Portuguese Government have, however, frequently stated and most recently in Dr. Salazar's speech of April 27, that the above policy is in no way inconsistent with the Anglo-Portuguese alliance which was reaffirmed by the Portuguese Government in the early days of the war. His Majesty's Governments in the United Kingdom, basing themselves upon this ancient alliance, have now requested the Portuguese Government to accord them certain facilities in the Azores which will enable better protection to be provided for merchant shipping in the Atlantic.

The Portuguese Government have agreed to grant this request and arrangements which enter into force immediately have been concluded between the two governments regarding first, the conditions governing the use of the above facilities by His Majesty's Government in the United Kingdom and, secondly, British assistance in furnishing essential material and supplies for the Portuguese armed forces and for the maintenance of Portugal's national economy.

The agreement concerning the use of facilities in the Azores is of a temporary nature only and in no way prejudices the maintenance of Portuguese sovereignty over Portuguese territory. All British forces will be withdrawn from the Azores at the end of hostilities. Nothing in this agreement affects the continued desire of the Portuguese Government, with which His Majesty's Government have declared themselves in sympathy, to continue their policy of neutrality on the Euro-

pean mainland and thus to maintain a zone of peace in the Iberian Peninsula.

In the view of His Majesty's Government this agreement should give new life and vigor to the alliance which has so long existed between the United Kingdom and Portugal to their mutual advantage. It not only confirms and strengthens political guarantees resulting from treaties of alliance, but also affords new proof of Anglo-Portuguese friendship and provides additional guarantees for the development of this friendship in the future.

On the conclusion of these negotiations the Foreign Secretary, who has, I think, conducted them with the very greatest skill and patience, has exchanged most cordial messages with the Portuguese President of the Council.

In his message the Foreign Secretary affirmed his conviction that the facilities now granted by the Portuguese Government will greatly contribute to the effective defense of our shipping and thus will prove an important factor in shortening the war. He added that the agreement would give fresh vitality to the ancient alliance and enhance the close and friendly relations which have so long subsisted between Portugal and Great Britain.

In replying to this message Dr. Salazar stated that he shared the hope that the facilities granted by Portugal to her ally would help to bring about greater safety for shipping in the Atlantic; that he trusted that this new proof of Portugal's loyalty to her traditions would fortify the secular alliance and serve to draw still closer the bonds of friendship uniting the two peoples.

I take this opportunity of placing on record the appreciation of His Majesty's Government, which I have no doubt is shared by Parliament and the British nation, of the attitude of the Portuguese Government, whose loyalty to their British ally never wavered in the darkest hours of the war.

Texts of the messages exchanged by Foreign Secretary Anthony Eden and Dr. Antonio de Oliveira Salazar, Premier of Portugal, on the occasion of the granting of facilities to Britain in the Azores:

MR. EDEN'S MESSAGE

I ask Your Excellency to accept my best wishes on the entry into force of agreements between His Majesty's Government in the United Kingdom and the Portuguese Government covering the use by British forces of facilities in the Azores.

I am convinced that these facilities will greatly contribute to the effective defense of our shipping and thus prove an important factor in shortening the war.

The agreement will give fresh vitality to our ancient alliance and enhance the close and friendly relations which have so long subsisted between Portugal and Great Britain.

DR. SALAZAR'S REPLY

I thank Your Excellency for your kind message on the occasion of the entry into force of facilities granted in the Azores to British forces in virtue of an agreement concluded between the Portuguese and British Governments, based on the alliance between the two countries.

I share Your Excellency's hope that 'the facilities granted by Portugal to her ally will help to bring about greater safety for shipping in the Atlantic and 'I trust that this new proof of Portugal's loyalty to her traditions will fortify the secular alliance and serve to draw still closer the bonds of friendship uniting our two peoples.'

IX. Statement by the President of the United States, the Prime Minister of Great Britain, and the Premier of the Soviet Union on Italy's Declaration of War

(The Department of State Bulletin, Vol. IX, No. 225, October 16, 1943)

The 'following joint statement has been issued by the President of the United States, the Prime Minister of Great Britain, and the Premier of the Union of Soviet Socialist Republics, concerning the 'declaration of war by Italy against Germany:

The Governments of Great Britain, the United States and the Soviet Union acknowledge the position of the Royal Italian Government as stated by Marshal 'Badoglio and accept the active cooperation of the Italian nation and armed forces as a co-belligerent in the war 'against Germany. The military events since September eighth and the brutal maltreatment by the Germans of the Italian population, culminating in the Italian declaration of war against Germany have in fact made Italy a co-belligerent 'and the American, British and Soviet Governments will continue to work with the Italian Government on that basis. The three Governments acknowledge the Italian Government's pledge to submit to the will of the Italian people after 'the Germans have been driven from Italy, and it is understood that nothing can detract from 'the absolute and untrammelled right of the people of Italy by constitutional means to decide on the democratic form of government they will eventually 'have.

The relationship of co-belligerency between the Government of Italy and the United Nations governments cannot of itself affect the terms recently signed, which retain 'their full force and can only be adjusted by agreement between the allied governments in the light 'of the assistance which the Italian Government may be able to afford to the United Nations' cause.

X. Statement by President Roosevelt Regarding the Puppet Government in the Philippines

(The Department of State Bulletin, Vol. IX, No. 226, October 23, 1943)

On the fourteenth of 'this month a puppet government was set up in the Philippine Islands with José P. Laurel, formerly a justice of the Philippine Supreme Court, as "president". Jorge Vargas, formerly a member of the Philippine Commonwealth Cabinet, and Benigno Aquino, also formerly a member of that Cabinet, were closely associated 'with Laurel in this movement. The first act of the new puppet regime was to sign a military alliance with Japan. The second act was a hypocritical appeal for American sympathy which was made in fraud and deceit and was designed to confuse and mislead the Filipino people.

I wish to make it clear that neither the former collaborationist "Philippine Executive Commission" nor the present "Philippine 'Republic'" has the recognition or sympathy of the Government of the United States. No act of either body is now or ever will be considered lawful or binding by this Government.

The only Philippine government is that established by the people of the Philippines under the authorization of the 'Congress of the United States—the Government of the Commonwealth of the Philippine Islands. At my request, the principal executive officers of the Commonwealth were transferred in 1942 from Corregidor to Washington.

Further, it is our expressed policy that all the resources of the United States, both of men and

materials, shall be employed to 'drive the treacherous, invading Japanese from the Philippine Islands, to restore as quickly as possible orderly and free democratic processes of government' in the islands, and to establish there a truly independent Philippine nation.

Our sympathy goes out to those who remain loyal to 'the United States and the Commonwealth—to that great majority of the Filipino people who have not been deceived by the promises of the enemy and who look forward to 'the day when the scheming, perfidious Japanese shall have been driven from the Philippines. That day will come.

XI. The Tripartite Conference in Moscow

(Dept. of State Bulletin, Vol. IX, No. 228, Nov. 6, 1943)

Declaration of Four Nations on General Security

The Governments of the United States of America, the United Kingdom, the Soviet Union and China:

united in their determination, in accordance with the Declaration by the United Nations of January 1, 1942, and subsequent declarations, to continue hostilities against those Axis powers with which they respectively are at war until such powers have laid down their arms on the basis of unconditional surrender;

conscious of their responsibility to secure the liberation of themselves and the peoples allied with them from the menace of aggression;

recognizing the necessity of ensuring a rapid and orderly transition from war to peace and of establishing and maintaining international peace and security with the least diversion of the world's human and economic resources for armaments;

jointly declare:

1. That their united action, pledged for the prosecution of the war against their respective enemies, will be continued for the organization and maintenance of peace and security.

2. That those of them at war with a common enemy will act together in all matters relating to the surrender and disarmament of that enemy.

3. That they will take all measures deemed by them to be necessary to provide against any violation of the terms imposed upon the enemy.

4. That they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security.

5. That for the purpose of maintaining international peace and security pending the re-establishment of law and order and the inauguration of a system of general security, they will consult with one another and as occasion requires with other members of the United Nations with a view to joint action on behalf of the community of nations.

6. That after the termination of hostilities they will not employ their military forces within the territories of other states except for the purposes envisaged in this declaration and after joint consultation.

7. That they will confer and co-operate with one another and with other members of the United Nations to bring about a practicable general agreement with respect to the regulation of armaments in the post-war period.

V. MOLOTOV
ANTHONY EDEN
CORDELL HULL
FOO PING-SHEUNG

Moscow,
30th October, 1943.

Declaration Regarding Italy

The Foreign Secretaries of the United States of America, the United Kingdom and the Soviet Union have established that their three Governments are in complete agreement that Allied policy towards Italy must be based upon the fundamental principle that Fascism and all its evil influences and emanations shall be utterly destroyed and that the Italian people shall be given every opportunity to establish governmental and other institutions based upon democratic principles.

The Foreign Secretaries of the United States of America and the United Kingdom declare that the action of their Governments from the inception of the invasion of Italian territory, insofar as paramount military requirements have permitted, has been based upon this policy.

In the furtherance of this policy in the future the Foreign Secretaries of the three Governments are agreed that the following measures are important and should be put into effect:

1. It is essential that the Italian Government should be made more democratic by the introduction of representatives of those sections of the Italian people who have always opposed Fascism.

2. Freedom of speech, of religious worship, of political belief, of the press and of public meeting shall be restored in full measure to the Italian people, who shall also be entitled to form anti-Fascist political groups.

3. All institutions and organizations created by the Fascist régime shall be suppressed.

4. All Fascist or pro-Fascist elements shall be removed from the administration and from the institutions and organizations of a public character.

5. All political prisoners of the Fascist régime shall be released and accorded a full amnesty.

6. Democratic organs of local government shall be created.

7. Fascist chiefs and other persons known or suspected to be war criminals shall be arrested and handed over to justice.

In making this declaration the three Foreign Secretaries recognize that so long as active military operations continue in Italy the time at which it is possible to give full effect to the principles set out above will be determined by the Commander-in-Chief on the basis of instructions received through the Combined Chiefs of Staff. The three Governments, parties to this declaration will at the request of any one of them consult on this matter.

It is further understood that nothing in this resolution is to operate against the right of the Italian people ultimately to choose their own form of government.

Declaration on Austria

The governments of the United Kingdom, the Soviet Union and the United States of America are agreed that Austria, the first free country to fall a victim to Hitlerite aggression, shall be liberated from German domination.

They regard the annexation imposed upon Austria by Germany on March 15, 1938 as null and void. They consider themselves as in no

way bound by any changes effected in Austria since that date. They declare that they wish to see re-established a free and independent Austria, and thereby to open the way for the Austrian people themselves, as well as those neighboring states which will be faced with similar problems, to find that political and economic security which is the only basis for lasting peace.

Austria is reminded, however, that she has a responsibility which she cannot evade for participation in the war on the side of Hitlerite Germany, and that in the final settlement account will inevitably be taken of her own contribution to her liberation.

XII. Conference of President Roosevelt, Generalissimo Chiang Kai-shek, and Prime Minister Churchill in North Africa

(Dept. of State Bulletin, Vol. IX, No. 232, Dec. 4, 1943)

President Roosevelt, Generalissimo Chiang Kai-shek and Prime Minister Churchill, together with their respective military and diplomatic advisers, have completed a conference in North Africa.

The following general statement was issued:

"The several military missions have agreed upon future military operations against Japan. The Three Great Allies expressed their resolve to bring unrelenting pressure against their brutal enemies by sea, land, and air. This pressure is already rising.

"The Three Great Allies are fighting this war to restrain and punish the aggression of Japan. They covet no gain for themselves and have no thought of territorial expansion. It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed. The aforesaid three great powers, mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent.

“With these objects in view the three Allies, in harmony with those of the United Nations at war with Japan, will continue to persevere in the serious and prolonged operations necessary to procure the unconditional surrender of Japan.”

XIII. Conference of President Roosevelt, Prime Minister Churchill and Premier Stalin at Tehran

(Dept. of State Bulletin, Vol. IX, No. 233, Dec. 11, 1943)

Declaration of the Three Powers

We—The President of the United States, the Prime Minister of Great Britain, and the Premier of the Soviet Union, have met these four days past, in this, the Capital of our Ally, Iran, and have shaped and confirmed our common policy.

We express our determination that our nations shall work together in war and in the peace that will follow.

As to war—our military staffs have joined in our round table discussions, and we have concerted our plans for the destruction of the German forces. We have reached complete agreement as to the scope and timing of the operations to be undertaken from the east, west and south.

The common understanding which we have here reached guarantees that victory will be ours.

And as to peace—we are sure that our concord will win an enduring Peace. We recognize fully the supreme responsibility resting upon us and all the United Nations to make a peace which will command the goodwill of the overwhelming mass of the peoples of the world and banish the scourge and terror of war for many generations.

With our Diplomatic advisors we have surveyed the problems of the future. We shall seek

the cooperation and active participation of all nations, large and small, whose peoples in heart and mind are dedicated, as are our own peoples, to the elimination of tyranny and slavery, oppression and intolerance. We will welcome them, as they may choose to come, into a world family of Democratic Nations.

No power on earth can prevent our destroying the German armies by land, their U Boats by sea, and their war plants from the air.

Our attack will be relentless and increasing.

Emerging from these cordial conferences we look with confidence to the day when all peoples of the world may live free lives, untouched by tyranny, and according to their varying desires and their own consciences.

We came here with hope and determination. We leave here, friends in fact, in spirit and in purpose.

ROOSEVELT, CHURCHILL AND STALIN.

Signed at Tehran, December 1, 1943

Declaration Regarding Iran

The President of the United States of America, the Premier of the U. S. S. R., and the Prime Minister of the United Kingdom, having consulted with each other and with the Prime Minister of Iran, desire to declare the mutual agreement of their three Governments regarding relations with Iran.

The Governments of the United States of America, the U. S. S. R. and the United Kingdom recognize the assistance which Iran has given in the prosecution of the war against the common enemy,

particularly by facilitating the transportation of supplies from overseas to the Soviet Union. The three Governments realize that the war has caused special economic difficulties for Iran and they agreed that they will continue to make available to the Iran Government such economic assistance as may be possible, having regard to the heavy demands made upon them by their world-wide military operations and to the world-wide shortage of transport, raw materials and supplies for civilian consumption.

With respect to the post-war period, the Governments of the United States of America, the U. S. S. R. and the United Kingdom are in accord with the Government of Iran that any economic problem confronting Iran at the close of hostilities should receive full consideration along with those of other members of the United Nations by conferences or international agencies, held or created, to deal with international economic matters.

The Governments of the United States of America, the U. S. S. R. and the United Kingdom are at one with the Government of Iran in their desire for the maintenance of the independence, sovereignty and territorial integrity of Iran. They count upon the participation of Iran, together with all other peace-loving nations, in the establishment of international peace, security and prosperity after the war, in accordance with the principles of the Atlantic Charter, to which all four Governments have continued to subscribe.

XIV. Suspension of Oil Shipments to Spain

(The Department of State Bulletin, Vol. X, No. 240, January 29, 1944)

The loadings of Spanish tankers with petroleum products for Spain have been suspended through action of the State Department, pending a reconsideration of trade and general relations between Spain and the United States in the light of trends in Spanish policy. The Spanish Government has shown a certain reluctance to satisfy requests deemed both reasonable and important by the State Department and concerning which representations have continuously been addressed to the Spanish Government for some time past. Certain Italian warships and merchant vessels continue interned in Spanish ports; Spain continues to permit the export to Germany of certain vital war materials such as wolfram; Axis agents are active both in continental Spain and in Spanish African territory as well as in Tangier; some portion of the Blue Division appears still involved in the war against one of our allies; and reports have been received indicating the conclusion of a financial arrangement between the Spanish Government and Germany designed to make available to Germany substantial peseta credits which Germany unquestionably expects to apply to augmenting espionage and sabotage in Spanish territory and to intensifying opposition to us in the peninsula.

This action has been taken after consultation and agreement with the British Government.

XV. United States Relations With the Existing Argentine Regime

Statement by the Acting Secretary of State

(The Department of State Bulletin, Vol. X, No. 245, Mar. 4, 1944)

The foreign policy of the United States since the beginning of the war has been governed primarily by considerations of support to the prosecution of the war. That applies to our relations with any country. That is the single uppermost point in our policy and must remain so.

Prior to February 25, the Argentine Government had been headed by General Ramírez. On January 26, 1944 his Government broke relations with the Axis and indicated that it proposed to go further in cooperating in the defense of the Western Hemisphere and the preservation of hemispheric security.

Suddenly, on February 25, under well-known circumstances, General Ramírez abandoned the active conduct of affairs. This Government has reason to believe that groups not in sympathy with the declared Argentine policy of joining the defense of the hemisphere were active in this turn of affairs.

The Department of State thereupon instructed Ambassador Armour to refrain from entering official relations with the new regime pending developments. This is the present status of our relations with the existing Argentine regime.

In all matters relating to the security and defense of the hemisphere, we must look to the sub-

stance rather than the form. We are in a bitter war with a ruthless enemy whose plan has included conquest of the Western Hemisphere. To deal with such grave issues on a purely technical basis would be to close our eyes to the realities of the situation.

The support, by important elements inimical to the United Nations war effort, of movements designed to limit action already taken could only be a matter of grave anxiety.

The United States has at all times had close ties with Argentina and the Argentine people. It has consistently hoped, and continues to hope, that Argentina will take the steps necessary to bring her fully and completely into the realm of hemispheric solidarity, so that Argentina will play a part worthy of her great traditions in the worldwide struggle on which the lives of all of the American countries, including Argentina, now depend. The policies and types of action, present and future, which would effectuate this full cooperation are fully known in Argentina, as in the rest of the hemisphere.

XVI. United States Objectives in India and the Far East

Statement by the President

(The Department of State Bulletin, Vol X, No. 241, February 5, 1944)

The American objectives in India or elsewhere in continental Asia are to expel and defeat the Japanese, in the closest collaboration with our British, Chinese, and other Allies in that theater.

Our task in expelling the Japs from Burma, Malaya, Java, and other territory is military. We recognize that our British and Dutch brothers-in-arms are as determined to throw the Japs out of Malaya and the Dutch East Indies as we are determined to free the Philippines. We propose to help each other on the roads and waters and above them, eastward to these places and beyond to Tokyo. No matter what individual or individuals command in given areas, the purpose is the same.

There will, of course, be plenty of problems when we get there. Their solution will be easier if we all employ our utmost resources of experience, good-will, and good faith. Nobody in India or anywhere else in Asia will misunderstand the presence there of American armed forces if they will believe, as we do at home, that their job is to assure the defeat of Japan, without which there can be no opportunity for any of us to enjoy and expand the freedoms for which we fight.

XVII. Japanese Atrocities

United States Protests and Representations to Japan

(The Department of State Bulletin, Vol. X, No. 241, February 5, 1944)

Immediately after the attack on Pearl Harbor the Department of State took up with Japan the matter of according proper treatment for American nationals in Japanese hands. Although Japan is not a party to the Geneva Prisoners of War Convention the Department obtained from the Japanese Government a commitment to apply the provisions of that convention to American prisoners of war, and, so far as adaptable, to civilian internees held by Japan. Since the very beginning of the war, by repeated protests and representations through the protecting power, the Department has again and again called to the Japanese Government's attention failures on the part of Japanese authorities to live up to their Government's undertakings.

Horried at the accounts of repatriates who returned on the first exchange voyage of the *Gripsholm*, accounts with which the public is familiar through the statements of Mr. Grew and other repatriates, the Department made these accounts the basis of a vigorous and comprehensive protest to the Japanese Government.

The American people are familiar with the protest addressed to Japan following the Japanese Government's barbarous action in executing our aviators who fell into Japanese hands after General Doolittle's raid over Tokyo. In that pro-

test the Department again called upon the Japanese Government to carry out its agreement to observe the provisions of the convention and warned the Japanese Government in no uncertain terms that the American Government will hold personally and officially responsible for their acts of depravity and barbarity all officers of the Japanese Government who have participated in their commitment and, with the inexorable and inevitable conclusion of the war, will visit upon such Japanese officers the punishment they deserve for their uncivilized and inhuman acts against American prisoners of war.

When it received from the military authorities reports of the brutal atrocities and depraved cruelties inflicted by the Japanese upon American prisoners of war in the Philippines the Department again called upon the Japanese Government to honor its undertaking to apply the provisions of the Geneva Prisoners of War Convention and to observe in its treatment of American nationals held by it the international common law of decency.

These protests are but three of the many that have been sent by the Department to Japan.

In order that the public may be familiar with the Department's efforts to obtain from Japan fulfilment of its undertakings to treat American nationals in its hands in accordance with humane and civilized principles, there is printed below a statement giving the dates of the principal representations and protests made by the Department, with a brief résumé of their purpose. The latest of these, representations comprehensively citing

categories of abuse and of neglect to which American prisoners in the hands of the Japanese have been subjected and calling for amelioration of the treatment accorded to American nationals, both prisoners of war and civilian internees, went forward on January 27.

1942

January 13. The exchange of names of prisoners of war in accordance with article 77, Geneva Prisoners of War Convention, and of interned civilians in accordance with the same article when applied to the treatment of civilians, was proposed.

January 31. Request that representatives of the Swiss Government entrusted with the protection of American interests in Japan and Japanese-occupied territory be permitted to visit all camps where Americans are held, in accordance with article 86, Geneva Prisoners of War Convention. Similar facilities requested for representatives of the International Red Cross Committee in accordance with international usage.

February 3. Proposal to exchange names of civilian internees and prisoners of war repeated.

February 7. Request for permission to visit camps repeated.

February 13. Proposal that in application of clauses of Geneva Convention which relate to food and clothing, racial and national customs be taken into account.

February 14. Japanese Government informed that United States Government may have to

reconsider its policy of extending liberal treatment to Japanese if assurances are not given by the Japanese Government that liberal principles will be applied to Americans. Request that Swiss representative be permitted to visit part of Philippines occupied by the Japanese forces.

March 3. Request that nurses and other sanitary personnel be repatriated in accordance with article 12 of the Geneva Red Cross Convention.

March 11. Asked for immediate report of the names of American sick, wounded, and dead.

March 19. Made proposals with regard to the labor of civilians, provision of food according to national tastes, visits by friends, relatives, doctors, etc., visits by protecting power and international Red Cross to civilian internment camps.

April 3. Asked for permission for the appointment of an International Red Cross representative for the Philippines.

April 11. Request for improvement in treatment of civilians at Kobe.

May 14. Confirmation requested of message received from International Red Cross that Japanese authorities are applying Geneva Red Cross Convention.

May 14. Asked if Swiss representatives were permitted to interview prisoners of war without witnesses in accordance with article 86 of Geneva Prisoners of War Convention.

May 19. Asked for information concerning whereabouts of Americans from Wake Island.

May 19. Requested information concerning whereabouts of Americans in Philippine Islands.

May 20. Repeated request for lists of American wounded, sick, and dead.

May 20. Requested improvement of conditions under which civilian internees were held.

May 21. Requested visits to camps by Swiss representatives and application of Geneva Prisoners of War Convention in outlying areas in accordance with Japanese Government's undertaking.

June 4. Repeated request for permission for Swiss and International Red Cross representatives to visit camps.

June 11. Repeated request for permission for Swiss representatives to interview prisoners of war without witnesses.

June 19. Pressed for appointment of International Red Cross delegate in the Philippines.

July 14. Requested Japanese Government to report names of prisoners and internees held in Philippines and British and Netherlands territories under Japanese occupation in accordance with article 77, Geneva Prisoners of War Convention.

July 15. Repatriation of seriously sick and wounded prisoners of war on the basis of the Model Agreement attached to the Geneva Prisoners of War Convention proposed.

July 17. Requested Swiss to endeavor to have conditions in Kobe civilian camps improved.

August 7. Protest against the sentences imposed on Americans who attempted escape from Shanghai prisoner-of-war camp. These sentences were contrary to article 50, Geneva Prisoners of War Convention. Protest was made at the same time against the refusal of

the Japanese authorities to permit the Swiss representatives to visit these men.

August 12. Permission again requested for Swiss and International Red Cross representatives to visit all camps.

August 27. Again requested that visits to camps be permitted.

September 11. Additional request for the transmission of names of prisoners of war. Asked if prisoners might mail cards immediately after their arrival at camp in accordance with article 36, Geneva Prisoners of War Convention.

September 22. Lists of the camps, their location, and population requested.

September 26. Japanese asked to accept mail addressed to persons not reported as interned because Japanese authorities had not properly reported names of persons held.

September 29. Requested ranks of officers who unsuccessfully attempted to escape be restored. Protection of Geneva Prisoners of War Convention for American aviators reportedly being held incommunicado demanded.

September 29. Requested reporting of names of 400 American civilians known to have been on Wake Island and whose names have not yet been reported as prisoners or internees.

October 6. Pressed for reply concerning proposals for repatriation of seriously sick and wounded.

November 12. Pressed Japanese to provide at their expense medical care for internees in accordance with article 14, Geneva Prisoners of War Convention, when adapted to the treatment of civilian internees.

November 17. Protest against six cases of atrocities perpetrated by Japanese authorities.

November 17. Requested additional food at Negishi camp.

November 17. Weekly transmission of names of American prisoners of war and civilian internees requested in accordance with article 77, Geneva Prisoners of War Convention.

December 7. Names of captured aviators and permission to visit them requested.

December 7. Requested that (1) internees at Sumire be allowed to have visitors, (2) visitors may speak languages other than Japanese, (3) Swiss representatives be allowed to speak to internees without witnesses.

December 12. Extended protest regarding torture, neglect, physical violence, solitary confinement, illegal prison sentences, mistreatment, and abuse that led to deaths of some Americans; failure to permit visits to camps by Swiss and International Red Cross representatives; and other violations of the Geneva Prisoners of War Convention and the laws of humanity.

December 17. Protest against Japanese decision to apply Geneva Convention only to extent that its provisions do not change the effect of Japanese laws in force.

December 19. Protests against failure of Japanese to afford facilities to permit the receipt and distribution of relief supplies in accordance with article 37 of the Geneva Prisoners of War Convention.

1943

January 2. Requested that names of Americans held in an internment camp in Java be provided in accordance with article 77, Geneva Prisoners of War Convention, that Swiss representatives visit the camp in accordance with article 86, Geneva Prisoners of War Convention, and that International Red Cross representatives be permitted to visit the camp in accordance with general international usage.

January 4. Protest concerning conditions at Shinigawa prisoner-of-war camp. Protest covers insufficient diet (article 11, Geneva Prisoner of War Convention) and request that Japanese grant Americans reciprocal treatment with respect to mail privileges and wages for labor.

February 4. Requested a liberalization of maximum canteen purchases permitted in any month be granted on the basis of reciprocity.

February 5. Protest against Japanese failure to provide canteens in accordance with article 12, Geneva Prisoners of War Convention, failure to permit free exercise of religion in accordance with article 16, requirement that non-commissioned officers perform other than supervisory labor contrary to the provisions of article 27, limitation on correspondence with the protecting power contrary to article 44. Increased facilities with regard to mail requested on a basis of reciprocity.

February 12. Protest against failure of Japanese to provide heat at Urawa camp in accordance with article 10, Geneva Prisoners of War Convention.

February 15. Protest against Japanese refusal to permit Swiss representatives to interview internees without witnesses in accordance with article 86, Geneva Prisoners of War Convention.

February 16. Protest against the Japanese failure to provide proper medical attention to prisoners of war in accordance with article 14, Geneva Prisoners of War Convention.

February 18. Protest against program of general internment of American nationals in the Far East.

February 20. Protest against refusal of Japanese authorities to permit American internees to receive foodstuffs sent from the outside in accordance with article 37, Geneva Prisoners of War Convention. Japanese Government requested reciprocally to permit Americans to receive visitors.

February 25. Request that Japanese supply the names of Americans held in the Sham-Sui-Po prisoner-of-war camp, Kowloon, in accordance with article 77, Geneva Prisoners of War Convention.

March 1. Further protest with regard to failure of Japanese authorities to permit interviews without witnesses being present. Request that the Japanese authorities reciprocally provide underwear for American internees.

March 1. Protest against refusal of Japanese authorities in Thailand to apply Geneva Prisoners of War Convention in accordance with Japanese Government's undertaking.

March 6. Protest against refusal of Japanese Government to permit representatives of protecting

power to visit and to communicate with American civilian internees at Singapore in accordance with articles 44 and 86, Geneva Prisoners of War Convention.

March 8. Request for permission for Swiss representatives to visit American prisoners of war in labor detachments.

March 11. Japanese Government reminded that United States Government expects that Geneva Prisoners of War Convention will be applied to the treatment of American prisoners held by the Japanese forces in Thailand.

March 12. Japanese Government pressed to restore military rank of American officers who, as a penalty for trying to escape, were deprived of their rank contrary to article 49, Geneva Prisoners of War Convention.

March 15. Additional protest against failure of Japanese authorities to transmit the names of prisoners of war and civilian internees in accordance with article 77, Geneva Prisoners of War Convention.

March 16. Protest against refusal of Japanese authorities to install canteens where foodstuffs may be purchased in accordance with article 12, Geneva Prisoners of War Convention, and to permit interviews between internees and Swiss delegate without witnesses.

March 18. Protest against another instance when Japanese did not permit Swiss representative to interview internees without witnesses.

March 26. Reciprocal treatment again requested with regard to mail forwarded by civilian internees and prisoners of war.

March 30. Protest against failure of Japanese Government to report names of all American civilians who were taken into custody at Wake Island.

April 3. Further protest against Japanese failure to provide clothing in accordance with article 12, Geneva Prisoners of War Convention.

April 8. Reciprocal treatment requested for interned persons to live together as family units.

April 12. Protest against the Japanese action in sentencing to death American airmen for acts committed during military operations. Protest made at the same time against Japanese refusal to grant these men the safeguards with respect to judicial proceedings set up in articles 60, 61, 62, 65, and 66, Geneva Prisoners of War Convention.

May 22. Protest against refusal of the Japanese Government to permit representatives of the protecting power to act in behalf of American interests in Hong Kong.

May 25. Protest against Japanese refusal to permit visits to camps near Shanghai by representatives of the Swiss Consulate General.

May 25. Protest against continued Japanese refusal to permit conversations between prisoners of war and Swiss representatives without witnesses.

May 25. Protest against refusal of Japanese Government to permit advances of official United States Government funds to needy American nationals detained by Japan.

May 25. Further protest with regard to the failure of the Japanese Government to report

names of all civilians last known to have been on Wake Island.

May 27. General protest against the Japanese failure to provide standards of housing, diet, clothing, medical care, etc., for Americans, that are in accordance with the Geneva Prisoners of War Convention.

May 31. Request that Swiss visit civilians interned in Philippines and prisoners of war held at Mukden, Manchuria.

June 5. Protest against failure of Japanese to permit visits by representatives of the protecting power to internment camps in and near Canton, Weihsien, and Wuhu, all in China.

June 9. Protest against failure of Japanese Government to permit Swiss to visit prisoner-of-war camp at Hakodate in accordance with article 86, Geneva Prisoners of War Convention.

July 3. Further protest with regard to failure of Japanese authorities to permit Swiss representatives to visit camps.

July 6. Extended protest against the Japanese Government's refusal to permit Swiss representatives to visit all prisoner-of-war and civilian internment camps in Japan and Japanese-occupied territory.

July 17. Protest against Japanese Government's action in locating camps in an unhealthy location, in failing to communicate orders to prisoners of war in a language which they understand, in failing to permit the camp spokesmen to correspond with the protecting power, in failing to provide clothing, and in requiring excessive hours of labor by prisoners of war.

These acts were contrary to articles 10, 20, 44, 12, and 30, respectively, of the Geneva Prisoners of War Convention. Reciprocal treatment with regard to mail again requested.

July 20. Protest against failure of Japanese authorities to (1) supply adequate food, lodging, and clothing (2) to permit representatives of protecting power to interview internees without witnesses (3) establish canteens at civilian internment camps.

August 5. Protest against failure of Japanese Government to report names of Americans being held in Burma as required by article 77, Geneva Prisoners of War Convention.

October 7. Protest against failure of Japanese authorities to permit visits to prisoner-of-war camp at Fukuoka.

October 13. Reciprocal treatment requested with respect to the privilege of dating letters and postcards mailed by prisoners of war and civilian internees.

November 19. Additional protest with respect to the failure of the Japanese Government to report the names of American civilians interned at Wake Island.

November 22. Protest against Japanese failure to permit the Swiss representatives to visit American prisoners of war held by the Japanese in Thailand.

December 1. Additional representations with respect to reciprocal privileges for prisoners of war and civilian internees to forward mail.

December 2. Additional protest with respect to the failure of the Japanese Government to report

the names of all civilians held in internment camps as well as the release or transfer of persons previously reported in accordance with article 77 of the Geneva Prisoners of War Convention when it is adapted to the treatment of civilian internees.

December 11. Protest against Japanese refusal to permit representatives of the protecting power to visit sick Americans held in hospital in Shanghai.

1944

January 27. Extended protest to Japanese Government with respect to:

- (1) Failure to permit representatives of Swiss Government and of the International Red Cross Committee to visit all places where Americans are held
- (2) failure to forward complaints to the appropriate authorities and to representatives of the protecting power
- (3) punishment of American nationals for complaining concerning the conditions of captivity
- (4) failure to furnish needed clothing to American nationals
- (5) confiscation of personal effects from American civilian internees and prisoners of war.
- (6) subjection of Americans to insults and to public curiosity
- (7) failure and refusal to provide health-sustaining food
- (8) improper use of the profits of the sale of goods in camp canteens

- (9) forcing civilians to perform labor other than that connected with the administration, maintenance, and management of internment camps
- (10) forcing officer prisoners of war to perform labor and non-commissioned officers to do other than supervisory work
- (11) requiring prisoners of war to perform labor that has a direct relation with war operations
- (12) failure to provide proper medical care
- (13) failure to report the names of all prisoners of war and civilian internees in their hands and of American combatants found dead on the field of battle
- (14) failure to permit prisoners of war freely to exercise their religion
- (15) failure to post copies of Geneva Prisoners of War Convention in English translation in the camps
- (16) failure to provide adequate equipment and accommodations in the camps
- (17) failure to apply the provisions of the Geneva Prisoners of War Convention with respect to the trial and punishment of prisoners of war
- (18) inflicting corporal punishment and torture upon American nationals.

January 27. Comprehensive statement detailing specific instances of failure of the Japanese Government to abide by its commitments as charged above.

XVIII. Granting of Plenipotentiary Powers in the Field of Foreign Relations to Each of the Soviet Socialist Republics

(The Department of State Bulletin, Vol. X, No. 254, May 6, 1944)

Under provisions of the law adopted by the Supreme Soviet of the Union of Soviet Socialist Republics on February 1, 1944, each Soviet Republic has the right to enter into direct relations with foreign states and to conclude agreements with them.

A translation of the law and a translation of a circular note of February 11, 1944 from the Soviet Foreign Office concerning the reorganization of the People's Commissariat for Foreign Affairs, with which the law was enclosed, were transmitted to the Department of State with a despatch of February 15, 1944 from the American Embassy at Moscow.

The circular note reads in part as follows (translation):

“With a view to expanding international relations and to strengthening the collaboration of the Union of Soviet Socialist Republics with other states, and in view of the growing need of the Soviet Republics for establishing direct relations with foreign states, the new Law provides that each Soviet Republic has the right to enter into direct relations with foreign states, to conclude agreements with them and to exchange diplomatic and consular representatives. The Law of February 1, 1944, introduces appropriate amendments

into the present Constitution of the Union of Soviet Socialist Republics of December 5, 1936.”

A translation of the text of the law follows:

THE LAW FOR THE GRANTING TO THE UNION REPUBLICS OF PLENIPOTENTIARY POWERS IN THE FIELD OF FOREIGN RELATIONS AND FOR THE CORRESPONDING REORGANIZATION OF THE PEOPLE'S COMMISSARIAT FOR FOREIGN AFFAIRS FROM AN ALL-UNION TO A UNION-REPUBLICAN PEOPLE'S COMMISSARIAT.

With a view to extending international relations and to strengthening the collaboration of the Union of Soviet Socialist Republics with other states and in view of the growing need of the Union Republics to establish direct relations with foreign states, the Supreme Soviet of the Union of Soviet Socialist Republics resolves:

1. To provide that the Union Republics may enter into direct relations with foreign states and conclude agreements with them.

2. To include in the Constitution of the U. S. S. R. the following amendments:

(a). Add to Article 14 point “a” of the Constitution of the U. S. S. R. after the words “representation of the Union in international relations, conclusion and ratification of treaties” the words “the establishment of the general form of mutual relations of the Union Republics with foreign states” whereby this point will read as follows:

“(a). Representation of the Union in international relations, conclusion and ratification of treaties with other states, and the establishment of the general form of mutual relations of the Union Republics with foreign states.”

(b). Add to the Constitution of the U. S. S. R. Article 18-a with the following content:

"Article 18-a. Each Union Republic has the right to enter into direct relations with foreign states, to conclude agreements with them and to exchange diplomatic and consular representatives."

(c). Add to Article 60 of the Constitution of the U. S. S. R. point "e" with the following content:

"(e). Establishes representation of the Union Republic in international relations."

3. To reorganize the People's Commissariat for Foreign Affairs from an All-Union to a Union-Republican People's Commissariat.

President of the Presidium of the Supreme Soviet of the U. S. S. R., M. KALININ.

Secretary of the Presidium of the Supreme Soviet of the U. S. S. R., A. GORKIN.

MOSCOW, KREMLIN *February 1, 1944.*

XIX. Sovereign Equality for All Nations

Statement by the Secretary of State

(The Department of State Bulletin, Vol. X, No. 258, June 3, 1944)

At his press and radio news conference on June 1 the Secretary of State made the following reply in answer to a question whether there was anything he could say that might be of reassurance to the small nations. The correspondent who asked the question pointed out that some of the small nations seemed to think that they would not be properly represented in the proposed international organization:

"That is a matter in which the small nations and the large nations as well should be at all times especially interested. It is a mutual affair. The future welfare of each nation depends upon the welfare of all. In view of that common interest and that self-interest in every mutual sense, I doubt whether there would be many nations, large or small, which would have any other purpose than to cooperate in all legitimate and practicable international relationships that would be mutually advantageous and mutually profitable. As far as this Government is concerned, whenever I have said anything on this subject, it has always emphasized the all-inclusive nature of the world situation and our disposition and purpose to see that all nations, especially the small nations, are kept on a position of equality with all others and that, in every practicable way, there will be cooperation.

"Now, it is not possible at this stage for this Government or any government to give anybody a blueprint as to all of the details of how these relationships between all of the different nations will be gradually developed and perfected. There is no occasion to be especially concerned about the

attitude of this Government in view of the declarations that the President, and I, and others have made. The truth is that even those declarations are not necessarily called for in the light of our entire history and our traditions. 'We have for 150 years preached liberty to all the nations of the earth, to all the peoples of the earth, and we have practiced it. We have encouraged all nations to aspire to liberty, and to enjoy it. Our attitude toward the Philippines is a striking example. Nobody had to put us on the witness stand to know what we were doing for them.

"Even back in our earlier days we preached the same spirit of liberty with which we, ourselves, were inspired in acquiring our own liberty, to all the nations—especially those that were in chains of depotism, as the South American countries were for centuries under Spanish rule. Nobody asked us to do it. That was our philosophy. That was our spirit, both at home and toward all peoples who might aspire to liberty. As soon as our American neighbors threw off the Spanish yoke we proceeded to recognize them, right and left. We had the same spirit toward Greece and other countries desiring liberty as we demonstrated in the Philippines. That has been our consistent record, a record of championship of liberty for everybody, encouraging them at all times and in all places. I see no reason why this country, this great free people who through generations have dedicated themselves to this wonderful human cause and preserved it—I see no reason why they should be catechized every morning before breakfast as to their loyalty to liberty, or their consistent desire of liberty for everybody and freedom for aspiring peoples everywhere."

XX. Post-War Security Organization Program

Statement by the President

(The Department of State Bulletin, Vol. 10, No. 260, June 17, 1944)

The conference today with officials of the Department of State on the post-war security organization program is a continuation of conferences which have been held from time to time during the past 18 months. These conferences have enabled me to give personal attention to the development and progress of the post-war work the Department of State is doing.

All plans and suggestions from groups, organizations, and individuals have been carefully discussed and considered. I wish to emphasize the entirely non-partisan nature of these consultations. All aspects of the post-war program have been debated in a cooperative spirit. This is a tribute to the political leaders who realize that the national interest demands a national program now. Such teamwork has met the overwhelming approval of the American people.

The maintenance of peace and security must be the joint task of all peace-loving nations. We have, therefore, sought to develop plans for an international organization comprising all such nations. The purpose of the organization would be to maintain peace and security and to assist the creation, through international cooperation, of conditions of stability and well-being necessary for peaceful and friendly relations among nations.

Accordingly, it is our thought that the organi-

zation would be a fully representative body with broad responsibilities for promoting and facilitating international cooperation, through such agencies as may be found necessary, to consider and deal with the problems of world relations. It is our further thought that the organization would provide for a council, elected annually by the fully representative body of all nations, which would include the four major nations and a suitable number of other nations. The council would concern itself with peaceful settlement of international disputes and with the prevention of threats to the peace or breaches of the peace.

There would also be an international court of justice to deal primarily with justiciable disputes.

We are not thinking of a superstate with its own police forces and other paraphernalia of coercive power. We are seeking effective agreement and arrangements through which the nations would maintain, according to their capacities, adequate forces to meet the needs of preventing war and of making impossible deliberate preparation for war and to have such forces available for joint action when necessary.

All this, of course, will become possible once our present enemies are defeated and effective arrangements are made to prevent them from making war again.

Beyond that, the hope of a peaceful and advancing world will rest upon the willingness and ability of the peace-loving nations, large and small, bearing responsibility commensurate with their individual capacities, to work together for the maintenance of peace and security.

XXI. Severance of Diplomatic Relations With Finland

(The Department of State Bulletin, Vol. XI, No. 262, July 2, 1944)

On June 30 the following note was delivered to Mr. Alexander Thesleff, Chargé d'Affaires of Finland:

JUNE 30, 1944.

SIR:

On June 27, 1944, the Finnish Government made the following announcement:

"The German Foreign Minister von Ribbentrop has concluded his visit to the Finnish Government.

"During this visit questions of interest to Finland and Germany were discussed, especially Finland's expressed desire with respect to military aid. The German Government has declared itself prepared to comply with this wish of the Finnish Government.

"The discussions which were conducted between the President of the Finnish Republic Ryti and Foreign Minister Ramsay on one side and the German Foreign Minister on the other, are sustained by the spirit which has its roots in the comradeship in arms between the armies and the existing friendship between the two peoples.

"Complete agreement and understanding were reached on all points between the Finnish Government and the German Government."

The Finnish Government has thus formally admitted to the world that it has now entered a hard and fast military partnership with Nazi Germany irrevocable throughout the war, for the purpose of fighting the Allies of the United States, in alliance with the enemies of the United States. This action was taken without recourse to the established

democratic procedure of Finland, and responsibility for the consequences must rest solely on the Finnish Government.

The American Government is not unaware of the fact that the infiltration of German troops into Finland, with the consent of the Finnish Government and German infiltration into the councils of the Finnish Government have deprived Finland of liberty of action and reduced the Government of the Republic of Finland to the condition of a puppet of Nazi Germany.

This necessarily changes the status of the Finnish Government. The United States, up to the present, has taken every opportunity, publicly and through diplomatic representations, to warn the Finnish Government of the inevitable consequences of continuing its association with Nazi Germany. These warnings have been ignored, and the partnership is now complete.

The Government of the United States must take into account the fact that at this decisive stage in the combined operations of the military, naval and air forces of the United States and the other United Nations, the Finnish operations have a direct bearing on the success of the Allied effort. Notwithstanding the esteem in which the American people have held the people of Finland, further relations between the Government of the United States and the Government of Finland are now impossible.

The American Chargé d'Affaires in Helsinki has therefore been instructed to request passports for himself and for the members of his staff and their families.

The American Government is requesting the Swiss Government to assume immediately the representation of American interests in Finland.

Accept [etc.]

CORDELL HULL

The Chargé d'Affaires of Finland was handed his passport at 11 a. m. June 30 by Mr. George T. Summerlin, Special Assistant to the Secretary of State.

Arrangements will be made as soon as possible, on a basis of reciprocity, for the repatriation of Mr. Thesleff, his family, and the members of the Legation staff. Meanwhile, they will be treated with all appropriate personal courtesies although necessarily their activities will be restricted.

XXII. The United Nations Monetary and Financial Conference

(The Department of State Bulletin, Vol. XI, No. 226,
July 30, 1944)

Summary of Agreements

This Conference at Bretton Woods, representing nearly all the peoples of the world, has considered matters of international money and finance which are important for peace and prosperity. The Conference has agreed on the problems needing attention, the measures which should be taken, and the forms of international cooperation or organization which are required. The agreement reached on these large and complex matters is without precedent in the history of international economic relations.

I. The International Monetary Fund

Since foreign trade affects the standard of life of every people, all countries have a vital interest in the system of exchange of national currencies and the regulations and conditions which govern its working. Because these monetary transactions are international exchanges, the nations must agree on the basic rules which govern the exchanges if the system is to work smoothly. When they do not agree, and when single nations and small groups of nations attempt by special and different regulations of the foreign exchanges to gain trade advantages, the result in instability, a reduced volume of foreign trade, and damage to

national economies. This course of action is likely to lead to economic warfare and to endanger the world's peace.

The Conference has therefore agreed that broad international action is necessary to maintain an international monetary system which will promote foreign trade. The nations should consult and agree on international monetary changes which affect each other. They should outlaw practices which are agreed to be harmful to world prosperity, and they should assist each other to overcome short-term exchange difficulties.

The Conference has agreed that the nations here represented should establish for these purposes a permanent international body, *The International Monetary Fund*, with powers and resources adequate to perform the tasks assigned to it. Agreement has been reached concerning these powers and resources and the additional obligations which the member countries should undertake. Draft Articles of Agreement on these points have been prepared.

II. The International Bank for Reconstruction and Development

It is in the interest of all nations that post-war reconstruction should be rapid. Likewise, the development of the resources of particular regions is in the general economic interest. Programs of reconstruction and development will speed economic progress everywhere, will aid political stability and foster peace.

The Conference has agreed that expanded international investment is essential to provide a portion of the capital necessary for reconstruction and development.

The Conference has further agreed that the nations should cooperate to increase the volume of foreign investment for these purposes, made through normal business channels. It is especially important that the nations should cooperate to share the risks of such foreign investment, since the benefits are general.

The Conference has agreed that the nations should establish a permanent international body to perform these functions, to be called *The International Bank for Reconstruction and Development*. It has been agreed that the Bank should assist in providing capital through normal channels at reasonable rates of interest and for long periods for projects which will raise the productivity of the borrowing country. There is agreement that the Bank should guarantee loans made by others and that through their subscriptions of capital all countries should share with the borrowing country in guaranteeing such loans. The Conference has agreed on the powers and resources which the Bank must have and on the obligations which the member countries must assume, and has prepared draft Articles of Agreement accordingly.

The Conference has recommended that in carrying out the policies of the institutions here proposed special consideration should be given to the needs of countries which have suffered from enemy occupation and hostilities.

The proposals formulated at the Conference for the establishment of the Fund and the Bank are now submitted, in accordance with the terms of the invitation, for consideration of the governments and people of the countries represented.

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